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The
Office and Duties of Coroners
in Pennsylvania

An Essay

Awarded the Peter Stephen Duponceau Prize, by the Law Academy
of Philadelphia

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The
Office and Duties of Coroners
in Pennsylvania

An Essay

Awarded the Peter Stephen Duponceau Prize, by the Law Academy
of Philadelphia

by

Graham Cox Woodward

of the Philadelphia Bar

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PREFACE.

The following essay was written for the Peter Stephen Duponceau prize of the Law Academy of Philadelphia, and was awarded the prize in 1908. The delays which have accompanied its publication can best be atoned for by saying that it has been brought down to date by the author, who submits it as presenting the law of coroners as it stands to-day in Pennsylvania. The author desires to express his thanks to Mr. Justice Potter and to Judges Lamorelle and McPherson, the committee of the Faculty of the Law Academy, for their painstaking care in examining the essay prior to awarding the prize above mentioned and for the helpful suggestions made by them in regard thereto. The index has been built around the West Publishing Company's analysis of the subject as it appears in the American Digest with as few additions as possible, and for the kind permission to use this analysis the author takes pleasure in thus publicly expressing his thanks to the West Publishing Company. The author also desires to express his appreciation of the universal kindness and helpfulness of Luther E. Hewitt, Esq., Librarian of the Law Association Library.

G. C. W.

Philadelphia, September 1, 1911.

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THE OFFICE AND DUTIES OF CORONERS IN PENNSYLVANIA.

INTRODUCTION.

When Cain killed Abel (*a*) a situation arose which was new to the world. Disputes between man and man were infrequent and the tribunal before which they were tried was never reversed by a higher court. The Almighty was nearer men in those days; He took part in their affairs in a more personal way than He has found necessary since men have learned to judge each other. It would appear that no coronor's inquest was held over the body of Abel (*a*) nor were the first finders attached according to the laws of England (*b*).

In almost every civilized nation government officials investigate sudden deaths which are or seem unnatural or which are suspicious (*c*). The need of so doing is obvious for the guilty might escape or the innocent be suspected of the most heinous of all crimes were it not for swift and certain investigation when the body of one suddenly dead is found (*d*).

Among the Chinese an officer of the government inquires into all cases of sudden death. In France (*e*) Ger-

(*a*) Genesis, Chapter IV, verse 8.

(*b*) Select Coroners Rolls' Selden Society, Vol. 9, pages 1, 2, 3, 4, *et seq.*, and see Bracton, 121b.

(*c*) See 6 Am. Law Reg. (O. S.) 385, 11 Am. Law Reg. 488 Umf. Lex. Cor. 10.

(*d*) See Post. Section 34.

(*e*) See Code d'Instruction Criminell Arts. 44-281, Hubert's Manuel des Lois, 133, 6 Am. Law Reg. (O. S.) 385. "In France the Procureur, the prosecuting officer, proceeds to the place where a crime has been committed and makes the investigation. He has power to summon witnesses and take their testimony in writing, which is read to and signed by them, to prevent egress from the house or departure from the neighborhood, when he deems it necessary; and to seize all papers and other articles supposed to be connected with the crime. He is authorized to take with him to the place of the crime one or two persons by their art or profession capable of appreciating the nature and circumstances of the crime; and where a violent or suspicious death is the subject of inquiry, he is aided by one or two

many (*f*) Austria (*g*) Scotland (*h*) and even in Russia (*i*) a medical examiner employed by the government examines the bodies of all who may come to their end by unnatural means. He reports all cases where crime is suspected to the prosecuting authorities for further investigation (*k*). There is, however, no trace of the officer or functions of the coroner among the early Hindu laws (*l*). It may therefore be that this institution is one belonging to a more advanced state of civilization (*m*).

In England the practice of investigating such cases is an old one (*n*). The duties arising upon the sudden death of an individual devolve upon the coroner. It may be that the office took its origin from another source (*o*), but it is certain that these duties formed part of the ancient functions of the coroner.

In America it has always been the practice to hold an inquisition over the bodies of those suddenly dead. The limits of this institution and its development in Pennsylvania properly belong to another part of this work (*p*). Suffice it to say here that the custom is almost co-eval with English settlements in this country.

health officers, always physicians, who are to report the cause of death, and the condition of the body. He is the person subsequently charged with prosecution of the criminal. Teulet *Les Codes*, 1860. In Austria, this function likewise devolves upon the public prosecutor. In Prussia the Judge of first instance assisted by a surgeon and an actuary and two officers of the court makes the investigation. The procedure there is as well by hearing testimony for and against the accused, as by repeatedly questioning the accused with a view to obtaining a confession. Mittermayer's *Feuerbach's Lehrbuch*. In Scotland the 'Crownor' is the same as the Procureur in France." See 11 Am. L. R. 488.

(*f*) 6 Am. Law Reg. (O. S.) 385. In Bavaria the Ordinance Royale, March 31, 1826, provides for the inspection of dead bodies by government medical men.

(*g*) 6 Am. Law Reg. (O. S.) 385.

(*h*) See article by R. W. Renton, 5 Judicial Review, 167.

(*i*) 6 Am. Law Reg. (O. S.) 385.

(*k*) It is argued from this in the article in 11 Am. Law Reg. 488, that the office of coroner is quite different from the Continental method. (See note *e*, *supra*), but the object is the same.

(*l*) See Maine's Ancient Law.

(*m*) See Post, Part I, Chapter 1.

(*n*) See Post, Sects. 9, 10, 11 and 2 Inst. 31.

(*o*) See Post, Sec. 11, and see article by Charles Gross, 7 *Pol. Sci. Quar.* 656.

(*p*) Part II.

Two points of great interest arise when we begin the study of the office and duties of coroners in Pennsylvania. First: There is no general legislation in this State as to the duties of coroners (*q*). It was reported by the judges who investigated the condition of the law of this commonwealth in 1808 that several of the older English Statutes were still in force in Pennsylvania (*r*). As a corollary to this proposition, it follows that the English Common Law whether in construing the statutes or otherwise, except in so far as it is altered by the change of our form of government, and the changed conditions the colonists found in America, is also in force here (*s*). From this it is obvious that a competent understanding of the law of coroners in Pennsylvania can only be had by a careful study of the English law prior to the emigration of the colonists to America. In order to meet present conditions fairly and understandingly, it is necessary to divide the consideration of the whole subject into two main heads: first, a consideration of the origin and growth of the office of coroner in England together with his powers and duties there down to the settlement of our forefathers in this country (*t*); and secondly, the office and duties of coroners in Pennsylvania viewed in the light of their origin (*u*).

The second point of interest which draws our attention is that in obscure times the office of coroner and the methods of his inquest may have had much to do with the rise and development of the system of trial by jury (*v*). The discussion of this topic properly belongs in another part of this work.

The subject of coroners is closely allied to that of

(*q*) *Ex parte* Schulz, 6 Whart. 269-272 (1841); Rentschler *v.* Schuylkill County, 1 Schuyl. Leg. Rec. 289 (1880); Lancaster County *v.* Dern, 2 Grant, 252 (1852), and see McFadgen *v.* Chester County, 10 Pa. C. C. R. 124, s. c. 7 Mont. 149 (1891); Pickett *v.* Erie County, 19 W. N. C. 60 s. c., 3 Pa. C. C. R. 23 (1887); Robert's Digest, 100, *et seq.*

(*r*) 3 Binney, 599-601, Robert's Digest, 100, *et seq.*, and see Post, Part II.

(*s*) See Part II.

(*t*) Part I.

(*u*) Part II.

(*v*) See Gross, Introduction to Select Coroners' Rolls, XXX.

sheriffs and trenches somewhat upon that of crimes. If both of these subjects were to be investigated at full length there would be no room for a consideration of the proper duties of the office of coroner. To avoid unnecessarily encumbering this essay with irrelevant matter the fact that the coroner is under certain circumstances to assume the duties of some other officer (*w*) has been carefully noted, but the duties themselves have not been considered. It is necessary to go into the nature of the crimes investigated by coroners to a certain extent, but this has been done as briefly and concisely as possible, not in the hope of escaping the additional labor, but because these subjects are more properly discussed under their own headings.

(*w*) For example, the Sheriff or Prothonotary.

PART I.

The Origin and Growth of the Office of Coroner in England Together with his Powers and Duties.

CHAPTER I.

EARLY HISTORY OF CORONERS.

Sect. 1. Sir William Blackstone discreetly remarked (a) that "the coroner's is also a very ancient office at the common law." This is undoubtedly true. Two questions, however, arise at once; how ancient is it, and what was its origin? Careful study of the first of these questions leads us to agree with Doderidge, J., who said that the office is so old that no one knows its origin (b). There are several opinions upon the question. Great authorities have spoken very confidently (c), but they are irreconcilable. Most modern writers conclude that the twentieth chapter of the Articles in Eyre of 1194 give rise to the office of coroner (d). The Mirror places the date of its origin in Saxon times (e). Upon the authority of that statement some of

(a) 1 Blackstone's Commentaries, 346, citing 2 Coke's Institutes, 31 and 4 Coke's Institutes, 271.

(b) 3 Bulstrode, 176.

(c) Mirror, C. 1, Sect. 3; Staundeford's Pleas of the Crown, 48-49; 2 Coke's Institutes, 31; Bacon on Government, 57; 1 Blackstone's Commentaries, 347; Comyns' Digest, title Officer, G. 2; 6 Viner's Abridgment, 242; Bacon's Abridgment, title Coroners; Selden's Charters, 260; Stubbs' Constitutional History, Vol. 1, p. 505; 1 Stephen's Criminal Law, 217; Gross's Introduction to Select Coroners Rolls, XV; and see Maitland, Gneist, Bigelow, Palgrave and Reeves.

(d) "*Praeterea in quolibet comitatu eligantur tres milites et unus clericus custodes placitorum coronae.*" See Stubbs' Constitutional History, Vol. I, p. 505, where it is said the first writer to mention the office is Bracton, who gave its duties so fully as to imply it was recently established. But it is respectfully submitted that to clearly define the duties of the office is to indicate that it had been long established. See also article by Charles Gross, 7 Political Science Quarterly, 656, published in 1892, afterwards expanded into the introduction to Select Coroners Rolls, Volume 9, of the Selden Society series; and see also Maitland, Gneist, Bigelow, Stephen, Palgrave and Reeves.

(e) C. i, Sect. 3, *Auxi ordains fuer coroner's in chescun county et viscounts a garder le peace quant les countees sui demisterent del gard et bayliffs in lieu de centeners.* 2 Coke's Institutes, 31-174. See Crabbe, History of Law of England, CXI (1831).

the most revered writers on the law have gone so far as to say that the office was created in the time of King Alfred (*f*). It is stated (*g*) that in the reign of that monarch the earls were called to London and made into a parliament (*h*), they then surrendered their wardship of the counties, and coroners and sheriffs were then ordained to keep the peace (*i*).

Nathaniel Bacon casts a doubt upon this (*k*), but assures us that King Alfred put one of his judges to death for passing the death sentence on a man upon the record of the coroner only, without allowing the delinquent liberty to traverse (*l*). He seems to think the coroner's office was then as well established and his duties as clearly defined as they are today, but he gives no authority for his statement. In the charter of King Aethelstan to the monastery of St. John of Beverly, A. D. 925, we find mention of the office as one of long standing (*m*). The Charter rhymes. King Canute is supposed to have made a law that whenever a Dane was found dead and was unknown and the cause of death was not known it should be entered murder and the

(*f*) 2 Coke's Institutes, 31; Comyns' Digest, title Officer, G. 2; 6 Viner's Abridgment, 242; 1 Blackstone's Commentaries, 346. "It is evident he was an officer in Alfred's time, for that king put a judge to death for sentencing one to suffer death upon the coroner's record without allowing the delinquent liberty to traverse"; but Viner thinks him later than the sheriff, more the servant of the king of the two, 6 Viner's Abridgment, 242.

(*g*) Mirror, C. 1, Sect. 3.

(*h*) Doubt is cast on the whole by this statement, for it is very doubtful.

(*i*) Spel. 1, Vice Com. Lamb Eiren; Jervis on Coroners, 2 and 3; Bacon's Abridgement, title Coroners; 1 Blackstone's Commentaries, 347; 2 Coke's Institutes, 31. It is doubtful if the office is as old as that of sheriff if what Lord Coke says to the effect that the office of sheriff was incident to that of Proconsul under the Roman rule (Coke upon Littleton, 168 A) is correct.

(*k*) Bacon on Government, 66; 6 Viner's Abridgment, 242.

(*l*) Bacon on Government, 57.

(*m*) "If a man be found slain idrunkend
Sterved on Sain John Rike his aghen men
Withouten swike his aghen bailiffs make ye fight
Nan over coroner have ye might,
Swa hert may think or eghe see."
Swa hert think or eghe see."

Dugdale's Monasticon Anglicae, Vol. 4, p. 130 (Edition of 1817), and see p. 171. See also Birch Cartularium Saxonicum, Vol. II, p. 322. Poulson Beverlac, 39-149.

hundred should be amerced (*n*). If this be true there must have been an office in the time of King Canute very closely resembling that of coroner. But we cannot safely rely on such authorities. The glaring inaccuracies of the Mirror are universally known (*o*).

Sect. 2. The institution, as we shall see later (*p*), is one more adapted to the Norman notions of the king's peace and of feudalism than to the Saxon ideas of a free people, courts leet and courts baron. In Saxon times the power of royal judicature and pleas of the crown were not sufficiently developed (*q*) to admit a place for such an office.

Sect. 3. The period during which the office was instituted would seem then to be limited to the time between the Norman Conquest in 1066 and 1194. Modern scientific investigators are almost unanimous in saying that the Articles in Eyre of 1194 are the earliest authentic mention of coroners. They place the origin of the office at that date. It is, however, respectfully submitted that it does not necessarily follow that the first authentic mention should indicate the foundation of the offices. Crabbe goes so far as to say "they are first mentioned by name in this statute (Magna Charter c. 17) although allusion is made to the office in the capitula of Henry II and in those given in the reign of Richard I to the justices in Eyre wherein they were directed to choose three knights and one clerk in every county to be *custodes placitorum coronae* (*r*). Evidence as to county coroners before 1194 rests on reputed statutes and charters and on one reported case (*s*).

Sect. 4. In November 1194 Geoffrey Fitz Peter and William de Stutville two of the justices of the *Curia regis* record a case before them at Westminster to the effect that

(*n*) Mirror, C 1, Sect. 3.

(*o*) Mirror was probably written or edited by Horne before 17 Edward II; probably during the reign of Edward I.

(*p*) Post, Sect. 11.

(*q*) See Gross's Introduction to Select Coroners Rolls and Wellington's The King's Coroner.

(*r*) History of the English Law (first American Edition) 150.

(*s*) Rotuli Curiae Regis, Vol. 1, p. 50-51. See article of Charles Gross, 7 Political Science Quarterly, 656 (1892).

Hugh de Scriverbi had accused Alured de Glenthams as principal and a certain Jordan as accessory to the killing of his brother. Hugh stated that after the commission of the crime the accused had been placed in custody of the bailiffs of Gerard de Camville, sheriff of Lincolnshire. The coroners (*t*) having been called to Westminster say that at the first county court after the homicide, Hugh accused Jordan as principal and Alured as accessory. The sheriff and men of the County confirm the testimony of the coroners.

Gerard de Camville was sheriff of Lincolnshire from 1189 to 1194 with the exception of a few weeks in 1191 (*u*). In March 1194 he was removed by Richard I and serious accusations of treason were brought against him (*v*), for he was an ardent supporter of John. It is not likely therefore that Gerard was afterwards in office. It seems more than probable that Hugh brought his accusation before March 1194 and therefore before September 1194, when the Articles in Eyre were issued. It is moreover possible that the case of Hugh *v.* Alured *et al.* was as early as 1189 for both Geoffry Fitz Peter and William de Stutville were itinerant justices at that time (*w*). Here then is reasonable proof that whatever may have been the origin of the coroners office, the articles in Eyre of 1194 are not.

Sect. 5. Though we cannot appeal to so succinct authority to carry the office back of that time still we have evidence which deserves grave consideration. In 1189 the burgesses of Colchester received from Richard I a grant (*x*)

(*t*) Maitland strongly opposes the view that these were coroners duly elected before the Articles in Eyre of 1194 (English Historical Review, Vol. VIII, p. 758). They were called, he claims, as knights of the shire, not as coroners. If that be the case we must necessarily ask how was it that so short a time after the creation of the office in those days of infinitely slow travel did the justices in Eyre find coroners in Lincolnshire. Besides we must remember this case was tried before it came up at Westminster. For a discussion of this question see Gross's Introduction to Select Coroners Rolls XVIII.

(*u*) Hovenden, Vol. III, pp. XXIX, LVI, 134, 137; Foss's Judges, Vol. II, p. 48. He was made sheriff by Richard, soon after the latter came to the throne; Gross's Introduction to Select Coroners, Rolls XVII.

(*v*) Hovenden, Vol. III, p. 241-43.

(*w*) Foss Judges, Vol. I, p. 335. Citing Pipe Roll 34, 35.

(*x*) Afterwards confirmed by Henry III, "*Quod ipsi ponant de seipsis ballivos quos cunIQUE voluerient et justit (iarios) ad servandum*

of the right to appoint an officer who seems to have been a coroner. In the reign of Henry III, they demanded the privilege of appointing a coroner by concession of Richard I, there can be little doubt that they had reference to the grant of 1189 (y). In the thirteenth or fourteenth century the citizens of Norwich claimed that they had appointed their coroners since the reign of Stephen, but a hostile contemporary chronicler denies that they had and asserts that Norwich did not have this privilege "for a hundred years or more after the Norman Conquest" (z). Jervis seems to believe coroners existed long before 1194 but he is not very adequate as to what authority he has for his statements. He says they were called "*Serviens regis*" (a) in the reign of Henry II. In the reign of Richard I they were styled "*custos placitorum coronae*" (b), and in Magna Carta and subsequent statutes "*coronator*" (c).

Sect. 6. "Mr. Round has recently called attention to the existence of early justices of counties similar to those of boroughs. In Henry I's time Ralph Passeleive was *justarius* of Norfolk, and 1141 the Empress Maud granted to Geoffrey de Mandeville '*ut sit capitalis justiciarius in Essex*' * * * *de placitis et forisfactis quare pertinnerint ad coram meani*' (d). Considerable obscurity overhangs the functions of these justices, but is not improbable that they were the predecessors of the latter county coroners. (e).

"Equally obscure is a passage in the Pipe Roll of Henry I, p. 91. Under the heading 'Norfolk and Suffolk' a certain

placita coronae nostrae et ad placitiandum eadem placita infra burgum suum" *Madox Firma Burgi* 28.

(y) There is a marked resemblance between this charter and Chapter 20 of the Articles in Eyre of 1194, as also to the charters for municipal coroners granted by John.

(z) *Monasticon Anglicanum*, Vol. IV, p. 14. The narration is taken from the register of Bingham. The same claim of the citizens is entered in the civic records of Norwich, *Archaeological Journal*, Vol. 46, p. 303. See Gross Introduction to Select Coroners Rolls, XV, note 3.

(a) Jervis on Coroners 2, See Umfreville *Lex Coronatoris*, XX.

(b) Jervis on Coroners 2, Wilkins *Legis Anglo Saxonicae*, 337.

(c) Jervis on Coroners 2, Wilkins *Legis Anglo Saxonicae*, 346.

(d) Round, Geoffrey de Mandeville, 92, 110, 373 and see also *Ibid* 150, 167.

(e) Gross Introduction to Select Coroners Rolls, XVI.

Benjamin accounts for £4, 5s., '*ut custos diat placita qual coronae regis pertinent*' (f). Professor Maitland says: 'A Benjamin who has no surname looks uncommonly like a Jew and perhaps the pleas that he wished "to keep" are pleas concerning Jews.' If this interpretation is correct the prevailing view regarding the origin of the exchequer of the Jews will have to be modified. The language of the entry seems to indicate that Benjamin was a coroner" (g).

Sect. 7. Henry I is supposed to have granted to the citizens of London (h) the right to elect a "*justitiarius*" to hold pleas of the Crown (i). Professor Gross in speaking of this Charter and the Charter of Richard I to Colchester says: "Professor Maitland has raised certain objections to my interpretation of the passages in the Charters of London and Colchester (k). His opinion on this or any kindred subject is certainly worthy of careful consideration. 'The duty of a coroner in after times' he says '*is custodire placita coronae* and no doubt *servare* is equivalent to *custodire*. But then in these cases the same person is both to keep and to hold pleas of the Crown * * * it seems necessary to insist that from 1194 onwards we have in the coroner an officer who while he is bound *custodire placita coronae* is not entitled or at all events not empowered by the terms of his appointment *tenere* (or *placitare*) *placita coronae*. Is it not the very essence of the matter that in the coroners we have persons whose duty it was to 'keep' pleas which other persons are to 'hold'? What Professor Maitland here states regarding the functions of the coroner is certainly true after

(f) Mr. Gross in his note to this passage says, "my attention was first called to this reference in English Historical Review, Vol. VIII, p. 709 c. f. Pollock & Maitland, History of English Law, Vol. I, p. 520." Introduction to Select Coroners Rolls, XVII.

(g) Gross's Introduction to Select Coroners Rolls, XVII.

(h) This charter also greatly resembles the charter of Richard I to Colchester, the twentieth chapter of the Articles in Eyre of 1194 and the charters for municipal coroners granted during the reign of John.

(i) "*Justitiarium quemcunque vel qualem voluerint de seipsis ad custodiendum placita coronae meae et eadem placitandum.*" Rymer Foedera, Vol. I, p. 11. Select Charters, 108. In Stephen's time Ger-vase de Cornhill and Geoffrey de Mandeville held this office. Round's Goeffrey de Mandeville, 453. Gross's Introduction to Select Coroners Rolls, XV.

(k) English Historical Review, VIII, 758-60.

the time of King John. But is it true of the twelfth century? The Great Charter of 1215 (ch. 24) (*l*) enacts that '*nullus vicecomes constabularius vel coronatores vel alii balivi nostri teneant placita coronae meae.*' Does not this imply that before 1215, coroners not merely 'kept' but also 'held' pleas? Moreover in dealing later on with the functions of the coroner we shall see that traces of these higher judicial duties adhere to the office in the thirteenth and fourteenth centuries (*m*). The burgesses of Colchester in the reign of Henry III were probably right in identifying their coroners with the 'Justices' whom they were allowed to have by Richard I's charter" (*n*).

Sect. 8. We cannot with the limited facilities at hand dispute what either of these learned writers says, much less decide between them, but were we to take the position occupied by Professor Maitland we would be obliged to meet the very awkward question, why does Magna Carta forbid coroners to "hold" pleas of the Crown? It might be answered that they had no right to "hold" such pleas and did so without right; that that was the grievance complained of and corrected by the Great Charter. But the evidence before us seems to tend against such a view for we find in the earlier charters some authorized to "keep" and others to "hold" as well as to "keep." The most logical conclusion is that those persons who were authorized to "hold" as well as to "keep" pleas of the Crown were also coroners and that coroners "held" pleas of the Crown of right.

Sect. 9. In the laws of Henry I we find a provision "*de rerum inventione*" the "*ostendatur tribus partibus vincineti (three viles) ut testimonium habeant de inventione*" (*o*). While this does not mention pleas of the Crown we cannot help agreeing with Umfreville that it sounds like a coroner's inquest. Moreover the same provision is found in the laws of the Conqueror (*p*).

(*l*) Evidently a mistake for Chapter 17.

(*m*) See Gross's Introduction to Select Coroners Rolls, "Functions of the Coroner," p. XXIV, *et seq.*

(*n*) Gross's Introduction to Select Coroners Rolls, XVI.

(*o*) Umfreville Lex Coronatoris XXVI Wilkins Legis Anglo Saxonicae, 220.

(*p*) *Ibid.*

In the laws of Edward the Confessor, we find the provision "*Si quiipsiam murdratus alicubi reperiebatur querebatus apud villiam interfecto illius*" and that "*super sacramentum*" without naming the office or the officer (*q*). Here again we are pointed to the duties of the coroner. Could these authorities be thoroughly relied upon we could argue from them that the office really existed under Edward the Confessor and from his time on, with varying fortunes until firmly established in 1194.

Sect. 10. Two grave difficulties confront us in attempting to reach such a conclusion and these must be surmounted before any theory on the subject can be given serious consideration. In the first place the office is not mentioned by Glanville (*qq*). His silence is eloquent. We may say that the office was not well established nor the duties clearly defined at the time Glanville wrote. In his meagre account of criminal procedure he may have had no occasion to refer to coroners. "Even after 1194 such records as the *Rotuli Curiae Regis* rarely mention (*r*) coroners during the reign of Richard I (*s*). In the second place the printed Pipe Rolls of 2-19 Henry II are silent on the subject of coroners. This difficulty, however, may be met by the same argument. The office is scarcely mentioned by them even after the famous article in Eyre.

Mr. Gross advances a theory (*t*) which may well be quoted. He says: "As the jurisdiction of the *Curia Regis* gradually increased and that of the local public courts diminished in the century following the Norman Conquest, the king's peace was extended, the category of crown pleas was enlarged (*u*) and new agents were therefore needed to see that criminals were brought to trial before the itinerant

(*q*) Umfreville *Lex Coronatoris*, XXXI; Wilkins *Legis Anglo Saxonicae*, 199, Chapter 15.

(*qq*) But Glanville scarcely mentions treasure trove which undoubtedly was of great importance at that time.

(*r*) How often do our State reports refer to them? There are perhaps a dozen references to the office in 280 volumes.

(*s*) Gross's *Introduction to Select Coroners Rolls*, XVIII.

(*t*) Gross's *Introduction to Select Coroners Rolls*, XIX.

(*u*) Stubbs *Constitutional History* Sects. 72, 73, 128, 163. Bigelow *Procedure*, 75-85. Pollock *Oxford Lectures*, 86. Maitland's *Manor Pleas*, pp. LIII, LIV.

justices. The coroner was in fact an important concomitant in the Eyre system, the latter needed the active co-operation of the former."

Both existed primarily for the king's profit (*v*), both were useful adjuncts of a highly centralized government. The development of the coroner's office may thus have been contemporary with that of the itinerant justices, both offices were perhaps tentatively employed under Henry I, fell into abeyance under Stephen and were firmly established under Henry II. Moreover, Henry II strove to curtail the authority of the sheriffs (*w*). Some of their functions ultimately passed to the coroners and the latter acted as a check on the former (*x*).

The rise of the office of coroner seems to imply a corresponding depression of that of sheriff, the establishment of the new office may have been the result of Henry II's policy of reducing the power of the sheriffs and centralizing the administration of justice in the itinerant justices and the *Curia Regis*. Whether this hypothesis is tenable or not it is probable that chapter 20 of the Articles of 1194 is merely a declaratory act referring to an institution already in existence.

Sect. II. A theory might be advanced which would satisfactorily explain the origin and rise of the office of coroner. It might be argued that the office having as it does much to do with pleas of the crown is closely connected with the king's peace.

From early times there has been a coroner of the king's household. It may have been that the coroner was at first the officer who took cognizance of breaches of the peace within the king's household. As the king's peace was extended coroners may have been appointed having jurisdic-

(*v*) The coroner was expected to seek diligently for the forfeited chattels of felons, for deodands, wreck and treasure trove. See Britton, Liber I, p. XXXI, Statute 4 Edward I, 11-18, I Statutes of the Realm 40, Abbreviatio Originalium, Vol. I, p. 18; Placita de Quo Warranto, 114. In the Coroners Rolls less concern is often manifested to bring the felon to justice than to secure his chattels for the King. Gross's Introduction to Select Coroners Rolls, XXIV, *et seq.* and see *Ibid* XIX.

(*w*) Stubbs Constitutional History, Sect. 163.

(*x*) Gross's Introduction to Select Coroners Rolls, XXVI, *et seq.*

tion in certain places or towns specially favored by the king with his peace until it was spread over the entire land, by which time coroners had come to be appointed in every county. But this does not accord with known facts. The peace of the king had been extended to all England before the Conquest (*y*), while our best information seems to be that the office of coroner was a purely Norman institution.

A more plausible theory seems to be that this office was established for the very purpose it accomplished; the gradual sapping away of the power of the local public courts, and the accumulation of their power in the hands of one of the king's officers. This might indeed account for the presence in the Great Charter of the chapter above mentioned for it cannot but seem highly improbable that the English people struggling with a tyrannical king would have put into their charter a provision limiting the powers of one of his officers and therefore offensive to him if there had not been a great abuse to be corrected and it seems equally unlikely that in twenty-one years an office created in 1194 could have become so offensive to the English people as to require such summary redress.

Perhaps a people who had seen the power of their local public courts gradually sapped away and one after another of their duties and privileges accumulated into the hands of kings "crowners" sought by this chapter to check the further growth of the office.

Sect. 12. Whatever may have been the cause and earliest history of the office of coroner it was certainly in existence in 1194 (*z*). During the reign of John, several municipal charters were granted, among others those to the cinque ports, which included, among the privileges they gave, the right to elect or appoint coroners, called in these charters "*custodes placitorum coronae*" or "*coronatores*" (*a*). The words were used interchangeably during the period (*b*).

(*y*) Pollock's Oxford Lectures, pp. 65 to 90.

(*z*) *Ante*, Sect. 1, note d.

(*a*) Gross's Introduction to Select Coroners Rolls, XVII.

(*b*) Selden's Pleas, 98.

It is not to be doubted that at this time the coroner not only received appeals (*c*) and made inquisitions, but that he tried the criminals as well (*d*). It is probable he received appeals of any felony or mayhem on the plaintiff finding sufficient pledges to the Sheriff to prosecute the appeal with effect (*e*). As Hawkins says (*f*), "the books generally mention the coroner as the person before whom such appeal is to be commenced without joining any other with him; from whence it seems clearly intimated that the coroner is the only person who hath jurisdiction in this matter." He might receive such an appeal without the concurrence of any other officer (*g*). "Before Magna Carta" says Viner (*h*) "the coroner had the following jurisdiction; (1) Inquisition in case of violent or untimely death, (2) abjurations of outlawry, etc., (3) Appeals by bill, etc."

They probably abused their power. Nathaniel Bacon tells of a case of a coroner who obtained a confession from a prisoner by torture (*i*).

Though chapter 17 of Magna Carta forbids them to hold pleas of the crown (*k*) they seem to have held jury trials in civil cases for some time afterwards (*l*). Hale tells us (*m*) "By Magna Carta chapter 17 he cannot determine

(*c*) 2 Hawkins Pleas of the Crown, Chap. 9, Sect. 39, 2 Hale's Pleas of the Crown, 67.

(*d*) 2 Coke's Institutes, 30-31-32; 2 Hale's Pleas of the Crown, 56; 1 Blackstone's Commentaries, 347; Dalton on Sheriffs, c. 10.

(*e*) Bracton, 122-147; Fleta Lib. 1 c. 25; Britton 5; Staundeford's Pleas of the Crown, 64, 22 Assize, 97-98. Finch 321-2, 4 Henry VI folio 16. Brooke's Abridgment, appeal 44, *contra* 17 Assize 5. Brooke's Abridgement, appeal 56, 2 Hale's Pleas of the Crown, 52-64. Hale's Summary 171. 2 Hawkins's Pleas of the Crown c. 9, Sect. 39.

(*f*) 2 Hawkins's Pleas of the Crown c. 9, Sect. 39.

(*g*) 2 Hale's Pleas of the Crown, 67. Hale's Summary, 172. 2 Hawkins's Pleas of the Crown, c. 9, Sect. 39.

(*h*) 6 Viners Abridgment, 243.

(*i*) Bacon on Government, 55.

(*k*) See Bracton 147, Fleta Lib. 1 Chap. 25, 22 Assize 97-98, Brooks Abridgment Appeal 56-62. Corone 82, 2 Coke's Institutes, 30-31-32; 2 Hale's Pleas of the Crown 67.

(*l*) Bracton's Note Book II, 227-389-420-452-466-516-571-572-627-675-682, III 151-155-228-264-473, Salt. Soc. IV 84-95-97; Dugdale's Monasticon Anglicae, Vol. VI, p. 2, and see Article by Charles Gross 7 Political Science Quarterly 656. They either took the place of the sheriff or more often sat with him. Gross's Introduction to Select Coroners Rolls XXV, as to the coroner's Counter Roll see Post Sect. 40.

(*m*) 2 Pleas of the Crown, 67.

the appeal, but he may still (1) record the non suit of the plaintiff in an appeal by bill before him (*n*); (2) Award a *capias* and *alias* to the sheriff and thereupon demand the defendant at five counties and outlaw the defendant (*o*), though Staundeford (*p*) makes a doubt of this and thinks the appeal must be removed by *certiorari* into the King's Bench whence only process of outlawry can issue. But to have the appeal before the coroner and sheriff (*q*) determined it must go to the King's Bench on *certiorari*."

Sect. 13. It is probable that at this time none but knights were coroners (*r*). The Statute of Merton in 1235 (*s*) joins the words "*Alius legalibus militibus*" to "*custodibus placita coronae*" (*t*) assuming that all coroners are knights (*u*). It seems hardly probable, therefore, that Nathaniel Bacon is correct in his remark (*v*) that before the Statute of Westminster 1 c 10 (*w*) the coroners were poor and mean and maintained themselves by bribery and extortion "and being found guilty had not sufficient to give recompense" (*ww*).

We have seen that whensoever the office of coroner may have had its rise it was well established at the time of Magna Carta, so well that its functions were limited by that Statute (*x*). It is frequently spoken of during the reign

(*n*) 22 Assize 93, and see Staundeford's Pleas of the Crown cap. 51.

(*o*) 22 Assize 97, and they also passed judgment on felons caught in the act. Britton, Book I, 37-56. Salt. Soc., Vol. IV, 214 c. f. Year Book 30-31 Edward I, 502. Gross's Introduction to Select Coroners Rolls XXV.

(*p*) Pleas of the Crown Lib. II cap. 14 f. 64 a.

(*q*) See Post Sect. 37. Staundeford's Pleas of the Crown Lib. II cap. 14.

(*r*) 2 Coke's Institutes 31, 176. Staundeford's Pleas of the Crown 48-49. 2 Hawkins's Pleas of the Crown c 9. Sects. 1, 2, and 3.

(*s*) 1 Statutes of the Realm 40.

(*t*) Chapter 3, see Umfreville Lex Coronatoris XXIV.

(*u*) 23 Assize pl. 7. 2 Bacon's Abridgment title, Coroners (A) note (a) 2 Hawkins's Pleas of the Crown c 9 Sect. 3, Jervis on Coroners, 10.

(*v*) Bacon on Government 179.

(*w*) 1 Statutes of the Realm 40.

(*ww*) But his view is supported by Staundeford, Pleas of the Crown cap. 51 and Fleta Lib. I cap. 18.

(*x*) See *Ante*, Sect. 12.

of Henry III (*y*). Bracton mentions it in his treatise (*z*). It would not, then, be suprising if we were to find about this time a general statute on the subject and such is the case. A discussion of the Statute of 4 Edward I. properly belongs under another heading (*a*) and will be there found. For the present let us observe that the office and duties which, possibly, ever since the Norman Conquest had been developing, crystalized into Statute Law in 1276 (*b*). From that time on the office and duties of coroners are the subject of frequent decisions and statutory enactments, but yet the office and its duties remain as we shall find out later (*c*) much the same today as they were in 1276. From this fact alone we might draw an inference strongly adverse to the orthodox theory that the office was created by the Articles in Eyre of 1194, scarcely one hundred years before.

(*y*) For the functions of coroners in the reigns of John and Henry III, see *Rotuli Curiae Regis*, Vol. I, pp. 51-418. *Selden's Pleas* 3-9-19-29-33-45-63-70-84-88-100-117. *Maitland's Gloucester Pleas* 4-15-20-47-55-78-94-116.

(*z*) See Post, Sects. 25, 27.

(*a*) Post, Sects. 25, 26, 27, 28.

(*b*) In Pollock and Maitland's *History of the English Law*, Vol. II, p. 641, this "statute" is spoken of as "apocryphal" for a discussion of the authenticity of the statute, see Post, Sect. 26.

(*c*) Part II.

CHAPTER II.

DEFINITION AND DIFFERENT KINDS OF CORONERS IN ENGLAND. THEIR JURISDICTION.

Sect. 14. The word "Coroner" is defined with typical ingenuousness by a leading dictionary (*a*) as "a municipal officer formerly charged with the interests of the private property of the Crown but whose main function in modern times is to hold inquests on the bodies of those who may be supposed to have died violent deaths." He is sometimes spoken of as a principal conservator of the peace (*b*) in every county. He is a very ancient (*bb*) officer (*c*) of the Crown (*d*)—coronator—his name is derived from *corona* (*e*) and "he is so called because he hath principally to do with pleas of the Crown or such wherein the King is more immediately concerned" (*f*). Lord Coke says "he is an officer of the Crown and has conusance of some pleas which are called *placita coronae*" (*g*). If by this he means that the coroner may receive appeals (*h*) and that his inquisition may be used in place of an indictment it would seem to be a stretch of the word "conusance." Surely we would hardly say (without qualification) that a police magistrate in Pennsylvania has conusance of murder cases. The word conusance connotes more to our minds. Outlawry cases (*i*) can hardly be called pleas of the crown though they may be considered such in a qualified sense. If,

(*a*) Century dictionary.

(*b*) Britton Cap. 1 Sect. 14; 2 Hawkins's Pleas of the Crown c 8, Sect. 5; Staundeford's Pleas of the Crown, 48-49.

(*bb*) 3 Bulstrode, 176.

(*c*) Staundeford's Pleas of the Crown 48-49, 2 Coke's Institutes 31; 1 Blackstone's Commentaries, 346; 4 Coke's Institutes, 271.

(*d*) 2 Coke's Institutes, 31; 4 Coke's Institutes, 271; Comyns Digest title officer, p. 1.

(*e*) 2 Coke's Institutes, 31.

(*f*) Register 172, Fitzherbert Natura Brevium, 164; 2 Coke's Institutes, 31; 4 Coke's Institutes, 271; 1 Blackstone's Commentaries, 346, and see 2 Hawkins's Pleas of the Crown c. 9, Sects. 1, 2, and 3.

(*g*) 2 Coke's Institutes, 31.

(*h*) Post, Sect. 36.

(*i*) Post, Sect. 37.

on the other hand, the expression intends what was afterwards stated by Chief Baron Comyns, Lord Coke is wrong. The digester tells us on the authority of Lord Coke's remark "the coroner is an ancient officer of the Crown whose duty it is to hold pleas of the Crown" (*k*). We have seen (*l*) even in Lord Coke's time, *a fortiori* in Chief Baron Comyns, the coroner had long since ceased to "hold" pleas of the Crown (*m*). The coroner has also been defined as he who "recorded all pleas of the Crown in the torn, all inquisitions of *felo de se* and people coming to an untimely end and likewise all outlawries and these coroners were in the nature of comptrollers to the sheriff, keeping a record of the fines and amercements in the sheriff's courts" (*n*). Perhaps the most concise definition we could give would be to say the coroner is an officer of the Crown, charged with the duty to investigate and record, certain matters relating to pleas of the crown.

Sect. 15. There were three kinds of coroners, viz.: (1) *Virtute officii*, (2) *Virtute cartae sive commissionis*; (3) *Virtute electionis* (*o*).

Sect. 16. The coroners *virtute officii* were the Chief Justice of the Court of King's Bench and his associate justices. The Lord Chief Justice was by virtue of his office Chief Coroner of all England (*p*). He "may if he pleases exercise the jurisdiction of a coroner in any part of the realm" (*q*). The other justices of the King's Bench were sovereign coroners (*r*). We may well imagine that the office was exercised about as often as most of the duties of offices held *ex officio*. This conjecture is borne out by the

(*k*) Commyns Digest Title Officer G. 1, citing 2 Coke's Institutes 31, 4 Coke's Institutes 271.

(*l*) *Ante*, Sect. 12.

(*m*) For a definition of coroner today see Post, Sect. 66.

(*n*) Gilbert's Historical View of the Exchequer 80, see 6 Viner's Abridgment 246-247.

(*o*) 2 Hale's Pleas of the Crown 53, 2 Bacon's Abridgement 424.

(*p*) Sadler's Case, 4 Coke's Rep. 57b (1588); Berkley's case, 2 Siderfin 90, (1658); 4 Coke's Institutes, 73; 2 Hale's Pleas of the Crown, 53; 1 Blackstone's Commentaries, 346.

(*q*) 1 Blackstone's Commentaries 346, even within the verge or other franchise; Wrote *v. Wiggis*, 4 Coke's Reports 46.

(*r*) 17 Edward 3, 13 a Lib. 4 fol. 57, 4 Coke's Institutes, 73; Sadler's Case, 4 Coke's Reports 576 (1588), and see Coke's Pl. Com. 262.

fact that there was a separate coroner especially for the King's Bench (*s*). But on one occasion certainly the Chief Justice of the King's Bench did act as coroner (*t*).

Finneaux, C. J. is supposed to have resolved "that if a man be slain in open rebellion, the Chief Justice upon view of the body may make a record thereof and send it into the King's Bench, and thereupon the party slain shall forfeit his lands and goods"—"which may be true," says Lord Hale (*u*), "as to the goods but not as to the lands because none can be attained after death except by act of Parliament." Lord Coke is of opinion that the resolution is good law. Matthew Bacon and Chief Justice Gibson agree with Finneaux and Lord Coke, that the goods would be forfeited and with Lord Hale that the lands would not be forfeited (*v*) on the principle that a man killed in open rebellion can under ordinary circumstances forfeit neither lands nor goods because he cannot be attainted after death. We cannot but feel that the logic of the situation is with Lord Coke. It is difficult for us to understand the niceties of the law of forfeiture, but it is still more difficult to understand upon what ground the distinction rests between the forfeiture of lands and of goods under the circumstances. It is certain a *felo de se* forfeited both lands and goods although he was dead. Granted the dead rebel can make no defense of his alleged rebellion; that argument applies with equal force to both lands and goods, and for that matter neither can a *felo de se* defend his character, though he has the inquest to do that (*x*).

Sect. 17. Coroners *virtute cartae sive commissionis* were of four kinds (1) the coroner of the verge (2) the

(*s*) Rot. Parl. Vol. III, p. 482, Vol. VI, p. 337, who also had jurisdiction over all deaths in the King's Bench Prison.

(*t*) In the time of Henry VII cited 2 Hale's Pleas of the Crown 53 in Sadler's Case, 4 Coke's Reports, 57b, (1588) in *ex parte* Schulz, 6 Wharton 272 (1841) and in Bacon's Abridgment Title Coroners fol. 1, and see 8 Edward III 38, 7 Henry IV 47, 2 Henry IV 10b.

(*u*) 2 Pleas of the Crown 53.

(*v*) Bacon's Abridgment Title Coroners fol. 1, *ex parte* Schultz, 6 Whart. 272 (1841).

(*x*) Of this inalienable right to have it judicially determined whether or not a man committed suicide before he is subject to the stigma of being *felo de se*, the local courts of Pennsylvania have robbed us.

coroner of the admiralty (3) other coroners appointed by the King and (4) coroners of franchises. The two last mentioned kinds may be considered as one group.

Sect. 18. From ancient times there has been a coroner of the king's household (*y*). There was also a coroner of the queen's household (*z*). The coroner of the king's household was known as coroner of the verge, (*a*) he was anciently appointed by the king's letters patent, but by the statute of 33 Henry VIII, Chapter 12 (*b*) the appointment was vested in the lord steward or the lord great master of the king's house for the time being (*c*). Anciently he had power to do all things relating to the office of coroner within the verge exclusive of the coroner of the county (*d*). He was also sometimes assigned to assay all weights and measures according to the king's standards (*e*) throughout the verge.

It may not be amiss here to explain the meaning of the long since forgotten term "verge." The verge is a movable jurisdiction of twelve miles (*f*) in radius from the place where for the time being the king held his court. It will be at once seen that the verge was a very indefinite thing. If the king held his court in Westminster today there was the verge; if tomorrow he should visit Kenilworth the verge at once ceased to be at Westminster and went with him to Kenilworth. The idea of the verge is closely allied to the ideas of the king's peace and the sanctity of the king's person. Wheresoever the king was, a certain sacredness existed which, for example, made it treason to kill a man in the king's presence. This sanctity spread like a halo around the place where the king was. His personal presence caused great sanctity. His palace a less degree (*ff*).

(*y*) Britton 2a.

(*z*) 19 Irish Law Times 144.

(*a*) Wrote *v. Wiggles*, 4 Coke's Reports 46 (1592).

(*b*) 3 Statutes of the Realm 845 (1541).

(*c*) 2 Hale's Pleas of the Crown 54.

(*d*) *Ibid.*

(*e*) Britton 2a.

(*f*) By 13 Richard II, c 3, 2 Statutes of the Realm, 62 (1389).

(*ff*) By 33 Henry VIII, c 12 Sect. 24. The coroner of the verge has sole jurisdiction over deaths which occur in the King's Palace.

Within a radius of twelve miles from the place where his court was held was protected by his majesty and was called the verge.

Anciently the coroner of the verge had exclusive right to do all things relating to his office within the verge (*g*). But there his privileges stopped. The county coroner indeed might not meddle with offenses done within the verge (*h*) but neither could the coroner of the verge meddle with offenses not done within the verge (*i*). Their respective jurisdictions were mutually exclusive (*k*). If, therefore, a man were killed within the verge and before the inquest was completed the king removed, the inquest could not be completed (*l*). The county coroner could not intromit, for the offense having been done within the verge was beyond his jurisdiction while the coroner of the verge was without authority to continue the moment the verge was removed from the place where the act was done. Sir Edward Coke is of the opinion that in such a case the coroner of the county might begin a new inquest *ne maleficia remanerint impunita* (*m*). But Sir Edward cites no authority for the proposition and Hawkins tells us he is mistaken (*n*).

Though the occasion might not be frequent there would have been a substantial failure of justice had the matter not been remedied by the *articuli super cartas* (*o*). Let us not be misunderstood in saying there would be a failure of justice. The innocent might stand under a suspicion of crime for want of an inquest to clear them (*oo*). The

(*g*) Britton fol. 2a.

(*h*) 2 Coke's Institutes 550, 2 Hawkins's Pleas of the Crown c 9 Sect. 15.

(*i*) Wrote *v. Wigges*, 4 Coke's Reports 47b, (1592); Comyns Digest Title Officer G. 1.

(*k*) Borough & Holcroft's Case, 2 Leonard, 160 (1579); Wrote *v. Wigges*, 4 Coke's Reports 46 (1592), 2 Hale's Pleas of the Crown, 54-55, 2 Hawkins's Pleas of the Crown c 9 Sect. 15.

(*l*) 2 Hawkins's Pleas of the Crown c. 9, Sect. 15.

(*m*) 2 Coke's Institutes, 547; Wrote *v. Wigges*, 4 Coke's Reports 46 (1592).

(*n*) 2 Pleas of the Crown c 9, Sect. 15, and see 2 Coke's Institutes 550.

(*o*) Chapter 3, 2 Coke's Institutes 550, and see Bacon's Abridgment Title Coroners (*b*).

(*oo*) 19 Irish Law Times 144.

coroner might be unable to secure to the king his forfeitures and deodands. The culprit might escape. But the justices of *oyer* and *terminer* or a justice of the peace or the grand jury might inquire (*p*) into the death and indict the criminal. But there was danger in this slower method of investigation, that the criminal might escape, for it must be remembered that the coroner was a committing magistrate. By *articuli super cartas* (*o*) where the offence was committed in the verge both the coroner of the verge and the coroner of the county within which the offence was committed "do their duty as belongeth to their office" (*q*). It was still true that an inquisition taken in the king's house by a coroner of the county where it was for the time being, sitting alone, was void and would be discharged (*r*). It was also true that an inquisition taken before the coroner of the verge was void where the fact did not appear to have been done in the verge and this was so even though the county coroner joined (*s*). Hawkins says, it is *coram non iudice* (*ss*) as to the coroner of the verge and the record being entire it cannot be void as to one and good as to the other for "peradventure the jury was directed principally by the coroner of the king's house and the witnesses examined and sworn by him" (*t*). If, therefore, the coroner of the verge joins the fact "must be laid within the verge" (*u*).

Such is the wording of the statute that it is doubtful whether the coroner of the verge, alone, could hold an inquisition of a fact occurring within the verge. Lord Coke tells us "if an offence be committed within the verge both coroners must sit and if the coroner of the king's house

(*p*) 2 Hawkins Pleas of the Crown c 9, Sect. 15; Wrote *v. Wiggess*, 4 Coke's Reports 47a (1592).

(*q*) 2 Coke's Institutes 550.

(*r*) Wrote *v. Wiggess*, 4 Coke's Reports 46b (1592); Hamlin's Case King's Bench 1610 Mss. see Borough & Holcroft's Case, 2 Leon. 160 (1579), and see Umfreville's Lex Caronatoris 150, 2 Hale's Pleas of the Crown 54.

(*s*) 2 Coke's Institutes 550, Wrote *v. Wiggess*, 4 Coke's Reports 47a (1592).

(*ss*) So does Coke, Wrote *v. Wiggess*, 4 Coke's Reports 47a (1592).

(*t*) 2 Hawkins's Pleas of the Crown c 9, Sect. 16.

(*u*) 2 Hawkins's Pleas of the Crown c 9, Sect. 16.

be absent the whole proceeding is void" (*v*). But Hawkins says beyond doubt the coroner of the verge alone may sit where one is slain within the verge (*w*). The conflict may have arisen from Lord Hale's remark that if one be slain within the palace the coroner of the verge may proceed alone under the method that was there prescribed (*x*). Even if this be true it does not follow that the same law applies where the offence was committed within the verge but without the palace for it must be remembered the precincts of the palace were more sacred than the verge generally.

Where the coroner of the verge and the coroner of the county joined in the inquisition, it was said that if the result could not be tried before the lord steward, process should issue at common law (*y*). If the court removed, the coroner of the county might go on with the inquest (*z*). Accepting Hawkins' reasoning as to why the coroner of the verge cannot take an inquisition of a fact committed without the verge, above referred to, it seems hard to reconcile the last proposition upon theory, though it is self-evident that to hold otherwise would be to annul the *articuli super cartas*. Peradventure the coroner of the verge did all the examining and swore all the witnesses up to the time when the court removed. To be sure it was not *coram non judice* then, but once the court has removed the authority of the coroner of the verge is gone and how can the authority of a part of the court cease in the midst of the cause and the cause go on? A more logical reading of the statute would seem to be that both coroners were to hold the inquest throughout jointly, the jurisdiction of the county coroner being extended so as to permit him to enter the verge *qua* coroner and that of the coroner of the verge so as to permit him to act after the court was gone, but that

(*v*) 2 Coke's Institutes, 550; Wrote *v. Wiggess*, 4 Coke's Reports 46 (1592).

(*w*) 2 Hawkins's Pleas of the Crown c 9, Sect. 18.

(*x*) 2 Hale's Pleas of the Crown 55, and see Statute 33 Henry VIII Cap. 12, 3 Statutes of the Realm 485 (1541).

(*y*) 2 Hale's Pleas of the Crown 54.

(*z*) Wrote *v. Wiggess*, 4 Coke's Reports 45b, 46a (1592).

does not seem to have been the contemporaneous interpretation of the statute (a).

Under the old English system of government there was nothing to prevent a man holding two offices so long as they were not incompatible. The same man might be coroner both of the verge and of the county (b). Text writers agree that where the same man holds both offices he may sit alone to hold an inquest upon a body killed within the verge and may continue to hold the inquest even after the court has removed (c). The dual capacity he holds brings him within *articuli super cartas* for both the coroner of the verge and the coroner of the county are sitting though in fact but one man is sitting. In *Wrote v. Wigges* (d) where the point was not necessary to the decision it was resolved that an inquest taken before one man who held both offices was sufficient, but when the point was directly before the King's Bench in *Borough & Holcroft's case* (e) in 1579 it was not decided "for" it was said "it is requisite that it be tried by two coroners" and in reply "though there be but one person yet there are two coroners."

As we shall see later (f) the coroner of the verge returned his inquisitions before the lord high steward (g).

Sect. 19. The coroner of the admiralty was also a coroner *virtute cartae sive commissionis* (h). He was appointed by the lord high admiral and had sole jurisdiction on the high seas (i). The coroner of the county had no jurisdiction of offences committed on the open seas or between high and low water mark when the tide was in, but

(a) *Wrote v. Wigges*, 4 Coke's Reports, 45b (1592).

(b) An instance where this was done occurs in *Wrote v. Wigges supra*.

(c) 3 Coke's Institutes, 134; 2 Hale's Pleas of the Crown, 55; Bacon's Abridgment Title Coroners (b); 2 Hawkins's Pleas of the Crown c 9, Sect. 17.

(d) 4 Coke's Reports 45b, 46a (1592).

(e) 2 Leonard, 160.

(f) Post, Sect. 57.

(g) 28 Henry VIII, c. 15, 3 Statutes of the Realm 671 (1536); 33 Henry VIII, c. 12, Sect. 3; 3 Statutes of the Realm 845 (1541), and see 2 Hale's Pleas of the Crown 54.

(h) Bacon's Abridgment Title Coroners pl. 2 and authorities there cited.

(i) 2 Hale's Pleas of the Crown 54, and only on the high seas at common law Staundeford's Pleas of the Crown 49, 50.

he had jurisdiction over offences committed in the latter place when the tide was out (*k*). The question very naturally arises what are the limits of the high seas. Upon the sea coast this question is easily answered by saying high water mark, when the tide is in, low water mark when it is out. This does not answer the question completely for we are compelled to ask, does this rule extend to all places where the tide rises and falls such as arms of the sea or great rivers? We are told on this point "it is no part of the sea where one may see what is done of the one part of the water and the other and see one land and the other. The coroner (meaning the county coroner) shall exercise his office in this case" (*l*). The expression is doubtful and has been doubtfully interpreted. Some authors say and some decisions hold that it means that where one can see from one side of the stream or arm of the sea to the other the water is *infra corpus comitatus* (*m*). Others, however, say that it is only where a person on one side of the water may see whatever is being done on the other side that the county coroner has jurisdiction (*n*). In *Leigh v. Burley* (*o*) Foster, J. said. "If the sea be not of any county the admiral hath jurisdiction or els (*sic*) not." It is submitted that this is the proper test. It was his brother Cook, J. who went further to say "if a man can see from side to side of a stream the admiral hath no jurisdiction."

The statute of 15 Richard II, c. 3 (*p*) is enlightening on this point; it enacts that "of death of man and mayhem in great ships hovering in the main stream in great rivers below the bridges near to the sea the admiral shall have jurisdiction" (*q*). If this be a correct translation of the

(*k*) 3 Coke's Institutes 115, 2 Hawkins's Pleas of the Crown c 9 Sect. 14. Sir Henry Constable's Case, 5 Coke's Reports 107 (1601).

(*l*) 8 Edward II, Coron. 399.

(*m*) *Leigh v. Burley*, Owen 122 (1610); Anonymous, Moore 891-2; 2 Hale's Pleas of the Crown, 54; Staundeford's Pleas of the Crown, 51; Hale's Summary 151.

(*n*) Fitzherbert's Abridgment Coroners, 399; 4 Coke's Institutes 140; 2 Rolle's Abridgment 179.

(*o*) Owen 122 (1610).

(*p*) 2 Statutes of the Realm 78 (1391).

(*q*) And see 8 Edward II, Coron., 399; 2 Hale's Pleas of the Crown 15-16-54.

statute Justice Cook was wrong when he said, the admiral had no jurisdiction where one may see from side to side of a stream. But the worthy justice has forestalled criticism by saying (*r*); "The statute is misprinted, the admiral does not have jurisdiction to the bridges; the words so translated refer to points or land's ends" (*rr*). If this be true and the admiral only has jurisdiction beyond the "points" he has no jurisdiction in rivers at all and the statute is self-contradictory. Hale points out that the act only applies to arms of the sea, not to mere creeks and to great ships, not to small ones (*s*), and then escapes from the principal difficulty by saying "on arms of the sea, within the body of the county the admiral has jurisdiction, but not exclusive jurisdiction"; nevertheless the coroner of the county may take the inquisitions on the great rivers (*t*).

Rex *v.* Solgard (*u*) though a later case than the period we are considering, throws a little light on this point. A sailor on board one of his majesty's men-of-war in the harbor of Portsmouth hanged himself in his cabin. The coroner of Hants being notified of the fact called at the ship to take an inquisition. The captain, Solgard, refused to allow him to come on board of the ship. An information was brought against Solgard and it was held that the admiralty coroner would have had at best but concurrent jurisdiction had he been present; not being present, the jurisdiction of the county coronor attached when he came to the ship to take the inquest; for public justice was at stake. The court, however, did not fine and imprison the captain but directed him not to obstruct the coroner. He had acted in good faith under his interpretation of the law (*v*) and he was an officer of the king.

In Atwood's case in the King's Bench in 1676 (*w*)

(*r*) Leigh *v.* Burley, Owen 122 (1610).

(*rr*) The Rotuli Parl. N. U. 30 says "pontz" old and corrupted forms and abridgments read "pointes" or "portes."

(*s*) 2 Hale's Pleas of the Crown 15-16-54.

(*t*) *Ibid.*

(*u*) Andrews 281 s. c. 2 Strange 1097 (1738).

(*v*) See Leigh *v.* Burley, Owen 122 (1610); Bracton 121, Fleta Lib. 1, 25.

(*w*) Mss. referred to in Umfreville's Lex. Coronotoris 144.

it appeared that Atwood, a broker, became financially involved and suddenly disappeared. Some naval men picked up his body in the Thames below St. Catharines. The admiralty coroner held an inquest upon the body and the jury found that the deceased had been drowned by accident. Thereupon the body was buried. The coroner of an adjoining county requested the admiralty coroner to deliver up the body to him that he might hold an inquest, but the admiralty coroner refused. For this refusal the county coroner brought a complaint to the King's Bench. Hale, C. J. upheld the admiral's jurisdiction saying, that in great rivers he, beyond doubt, had jurisdiction if he got the body first. Intimating that had the county coroner first secured the body the admiral would have been without jurisdiction. With submission to authority the rule thus suggested seems wrong on principle. The jurisdiction ought to be mutually exclusive. Either the county coroner should have jurisdiction or the coroner of the admiralty, but not both. It should not be reduced to an indecent scramble to secure the dead man's body.

The statute of Richard II, conferring jurisdiction on the admiralty coroner to the bridges (*x*), should it seems exclude the jurisdiction of the county coroner. The two decided cases are in perfect harmony with this theory for in *Rex v. Solgard* (*y*) the county coroner was held to have jurisdiction over a ship lying in Portsmouth harbor (*z*) and in Atwood's case (*a*) where the jurisdiction of the admiralty was upheld, the body was found below the bridges at St. Catherine's.

But the authority against the exclusiveness of jurisdiction is so great that it may be taken as pretty well settled that on great rivers and arms of the sea the coroner of the admiralty has concurrent jurisdiction with the county coroner (*aa*).

(*x*) If the words used do refer to bridges.

(*y*) *Supra*.

(*z*) *Rex v. Solgard* is a little hard to reconcile, Portsmouth Harbor is of considerable size and not wholly land locked.

(*a*) *Supra*.

(*aa*) Staundeford presents an early idea of the statute saying (Pleas of the Crown 50-51) that the jurisdiction is concurrent.

The coroner of the admiralty returned inquisitions taken before him to the commissioners in admiralty (*b*).

The coroner of the admiralty by virtue of his letters patent might appoint deputies (*c*) and it is to be noted he usually acted by deputy.

Sect. 20. "Ordinarily" says Lord Hale (*d*) speaking of coroners *virtute cartate sive commissionis* "made by grant or commission, without election, coroners of particular lords" or made by particular lords. The statute of 28 Edward III (*e*) which confirms the power of electing coroners to the counties saves the rights of the king and the lords of particular franchises. The king himself had the power to appoint coroners in certain franchises (*f*): among others the Bishop of Ely by Charter of Henry VII has the power to appoint coroners for the liberties of Ely, so the wardens of the Stannaries. Queen Catharine was granted the hundred of Colridge by the King (*g*) with power to "make" coroners (*h*). Others have the power to be coroners or are coroners. But the office being a judicial one (*i*) "None can prescribe to make coroners" (*k*). We are told (*l*) that the Lord Mayor of London is *ex officio* coroner of London (*m*).

Sect. 21. During the thirteenth and fourteenth centuries however London did not have a right to elect its coroner. The functions of that office were exercised by the chamberlain and the sheriffs. Some say the offices of mayor, chamberlain and coroner were all held by the same

(*b*) 28 Henry VIII, Chap. 15; 3 Statutes of the Realm 671 (1536); 33 Henry VIII, Chap. 12, Sect. 3; 3 Statutes of the Realm 845 (1541), and see 2 Hale's Pleas of the Crown 54.

(*c*) 2 Burn's Justices (Edition of 1845) 29; Jervis on Coroners 5 and 6.

(*d*) 2 Pleas of the Crown 53.

(*e*) *Ubi infra*. 1 Statutes of the Realm 345 (1354).

(*f*) 2 Hale's Pleas of the Crown 53-54, Coke upon Littleton 114.

(*g*) 35 Henry VIII.

(*h*) Ameredith's Case, 9 Coke's Reports 29b (1598).

(*i*) See Post, Sect. 41.

(*k*) Coke upon Littleton 114a.

(*l*) Bacon's Abridgment Tit. Coroners pl. 2.

(*m*) But the Mayor of London though Coroner, does not pronounce the sentences of outlawry; the Recorder does that, City of London's Case, 8 Coke's Reports 121a (1610); see Post, Sect. 38.

person (*n*). This view is not tenable, for the office of mayor and chamberlain were usually separate (*o*). But the chamberlain was *ex officio* coroner; at all events, during the reigns of Edward I and Edward II both offices were held by the king's butler. The duties of coroner were usually performed by his deputies, who were known as sub-coroners. "*Et nota*" says a record of 14 Edward II "*quod botellarius domini regis et camerarius domini regis et conorator idem sunt*" (*p*). In the fifty-first year of Edward III (*q*) and again in the first year of Richard II (*r*) the commons of London complained to the king of their grievances in this regard, saying public justice was neglected and the office made the means of private gain (*s*) but the king refused to redress them, claiming his ancient rights in the matter. But in 1478 they were granted the right to elect a coroner distinct from the Chief Butler's coroner (*t*).

Sect. 22. It is to be noted in this connection that this kind of coroner (*tt*) had no right to delegate his authority (*u*) even though he claimed the right by prescription (*v*). Their inquisitions were void unless they styled themselves "coroner" therein (*w*).

Sect. 23. Coroners *virtute electionis* were those who by the statute of Westminster I, chapter 10 (*x*) and the

(*n*) Reiley's Memorials 3, Lofties London 29, Pulling's Laws of London 19-128.

(*o*) Reiley's Memorials 47-55-149-169-183, etc. Liber Albus 86-96 Liber Cust. 239-246. The same person was both Mayor and Chamberlain in 4-6 Edward I, Reiley's Memorials 3-17 Liber Cust. 239-291, and John de Wengrave in 10 and 11 Edward II was both Mayor and Coroner (or sub-coroner) Liber Cust. 245-6.

(*p*) Liber Cust. 296.

(*q*) 1376.

(*r*) 1377.

(*s*) Graft evidently is no new disease.

(*t*) For a history of these struggles of London see Gross's Introduction to Select Coroners Rolls, XXIII.

(*tt*) Coroners *virtute cartae sive commissionis*.

(*u*) Jervis on Coroners 5-6, Staundeford's Pleas of the Crown, 51; except the admiralty coroner, who by virtue of his letters patent appointed deputies, 2 Burn's Justices 29 (Edition of 1845).

(*v*) Jervis on Coroners 5-6.

(*w*) 22 Edward IV f 12.

(*x*) 1 Statutes of the Realm 40 (1275), see 2 Coke's Institutes, 174; 2 Hale's Pleas of the Crown 55; Bacon's Abridgment Tit. Coroners pl. 3.

statute of 28 Edward III, chapter 6 (y) were eligible by the county (yy) in the full county court (z) by virtue of the King's writ *de coronatore eligendo* (zz) and sworn by the sheriff to the due execution of their office (a). There were usually four such coroners in each county (b), but sometimes there were six and sometimes less than four (c). The number of coroners belonging in any county was really indeterminate for the chancery might at any time issue a writ *de coronatore eligendo* to elect an additional coroner (d).

Professor Gross tells us (e) that during the thirteenth and fourteenth centuries there were four coroners in every county (f). Each of them was assisted by a deputy (*clercus*) who sometimes held the inquests (g). They seem usually to have been elected for the county at large, there being

(y) 1 Statutes of the Realm 346 (1354), Bacon's Abridgment Tit. Coroners pl. 3, and see Post, Sect. 29, note (c).

(yy) Britton 2a.

(z) Britton 2a, 28 Edward III c 6, 1 Statutes of the Realm 346 (1354), see Post. Sect. 29, note (c).

(zz) Post, Sect. 29.

(a) F. N. B. 163; 2 Hale's Pleas of the Crown, 55; Britton Chapt. 1, Sect. 4.

(b) Pleas of Gloucester 97, Rot. Claus, Vol. I, pp. 402, 622, 648. Northumberland Rolls, 372; Fitzherbert Natura Brevium, 163 L; 4 Coke's Institutes, 271; 1 Blackstone's Commentaries 346.

(c) Northumberland Rolls 68, where there were three. Two are mentioned Rot. Claus, Vol. II, p. 67; Devon Abb. Placit, 55. Generally it might be said in Wales there were two, in England generally four in the counties palatine in the north of England, six. By the Statute of 34 and 35 Henry VIII, cap. 26 in Wales and Chester there were two coroners, 4 Coke's Institute, 271; Huntingdon, little as it is, has five coroners (Chalmers Local Government 96); Dorsetshire has eleven (speech of Lord F. Harvey 1876; Hansard, Vol. 230, p. 1301 cited in Chalmers Local Government, p. 96).

(d) Jervis on Coroners 6 and 7.

(e) Introduction to Select Coroners Rolls, XX.

(f) Pl. of Gl. 97 Rot. Claus. Vol. I, 402-622-648 cf. *ibid*; 463-506; II, 91-105-119-126; Bracton II, 430; Salt. Soc. IV, 73-208-215; V, 121; VI, Pt. 1, 256, XII, 170 Northumb. Rolls, 372. Cf. *ibid*, 68 where only three coroners are mentioned. In some cases there were only two Rot. Claus. II, 67 Devon Abb. Placit, 55, Leicester cf. Bracton II, 430.

(g) The "Clercus" referred to in the articles of 1194, Sel. Char. 260 was probably an ecclesiastic who acted as clerk or scribe. Deputies or clerici are often mentioned under Henry III and his successors Bracton II, 588; Britton i 54, Fleta fol. 20, Rot. Hund. I, 3, 112, 130 Plac. Quo. War. 309, 421; Salt. Soc. IV, 215, VI, Pt. 1 257, Britton 1-7 says that it was unlawful for the coroner to substitute another in his place, cf. Statutes 1 211.

no division of the county into coroners' districts (*h*), "coroners of certain hundreds ridings and rapes are, however, occasionally mentioned" (*i*).

The writ of election and its effect and execution will be discussed in another chapter (*k*). The duties, rights, privileges and liabilities of these coroners will also be considered later on (*l*). Looking at the subject of coroners generally it may be taken for granted that the discussion applies to all coroners. Wherever there is a difference between the duties of any particular kind of coroner and those of the others that fact will be noted.

Sect. 24. It has been said that coroners *virtute electionis* were officers of the king; it is to be noted, however, that they were elected by their county (*m*). They derived their authority by virtue of their election, not by virtue of the king's commission, and therefore their office did not determine on the demise of the king (*n*) as does that of the sheriff. Their jurisdiction was limited to the county for which they were elected (*o*). The incomplete ideas of our forefathers did not extend beyond the idea, for example, that if a man be murdered, the murder must take place at some spot. Therefore, the place where the murder was done necessarily being within the jurisdiction of some coroner, the coroner of the place where the murder was committed should take cognizance of the offence. But of course the question arose early as to who had jurisdiction where the stroke was given in one county and the man died in another. It was doubtful whether the coroner of either county could

(*h*) For example the coroners of Bedfordshire served in various hundreds, pp. 1-38; in Henry III's time Adam Baret was coroner "*per totam comitatum*," Northumb. Rolls, 68.

(*i*) Sel. Cor. Rolls III, Rot. Hund. I, 75-371, 386 II 207 Memorials of Ripon. I 56 Roll 64 Mem. 14 *Rotulus Willelmy Skillet Coronatoris domini regis in partibus Holland.*

(*k*) Chapter IV, Sect. 29.

(*l*) Chapter V.

(*m*) See Post, Sect. 29.

(*n*) 2 Coke's Institutes, 175; 4 Coke's Institutes, 271; 2 Hale's Pleas of the Crown, 55; 2 Hawkins's Pleas of the Crown c 9, Sect. 5; *Tombes v. Etherington* 1 Levinz. 120 (1663); Resolutions at Sergeants Inn; Dyer 165 (1558) and Post, Sect. 29, note (*x*) *contra* Staundeford c 51.

(*o*) Jervis on Coroners 66, see Mirror capt., 13 of Liber I.

be said to have jurisdiction, for no murder was committed in the county where the stroke was given, for it lacked the essential element of death. No man died of the stroke in that county; but whereas a man died in the other county it was no murder there, for he did not die of a wound given in that county. Yet one case is reported (*p*) wherein a man was wounded in Bedford and went to Huntingdon and died there; the respective coroners held inquests in both counties.

A careful consideration of the true function of the coroner's office (*q*) leads almost inevitably to the conclusion that no such conflict should ever have existed. The coroners duty being to inquire into the surrounding circumstances where one is found suddenly dead it seems clear on principle that the coroner of the county where a man is found dead had jurisdiction to inquire (*qq*). But while this may seem clear from the viewpoint of the twentieth century it might have been by no means as clear when the office of coroner was emerging from its ancient function of judge. The necessity was then apparent that the judge should have jurisdiction of the crime and that unless the whole crime was committed in his county he could have no jurisdiction at all for no part of the crime could be considered the crime itself (*r*). Besides it is to be remembered that the inquisition was an indictment and must therefore lay a crime in some county. To escape these difficulties it was considered necessary to remove the body into the county where the deceased was hurt (*s*). It is doubtful, however, if this was ever actually done. It is difficult to see moreover how such a move helped matters. The presence of the body did not remove the fact that the man died outside of the county. Besides no offence was perpetrated in the county where the stroke was given and coroners had

(*p*) Selden Society II.

(*q*) See Post, Chapt. V.

(*qq*) The old idea seems to overlook the true question involved and to confuse the duty of the coroner to inquire into sudden deaths with his duty to record the indictment of the murdered if the jury found a murder had been committed.

(*r*) Jervis on Coroners, 39; 2 Hale's Pleas of the Crown, 66.

(*s*) 6 Henry VII 10a, and see 2 Hale's Pleas of the Crown, 66.

jurisdiction only of offences committed within their respective counties (*t*). It required a statute to clear the matter of doubt. The act of 2 and 3 Edward VI, chapter 24, Sect. 2 (*u*) provided that where a man was stricken in one county and died in another the culprit should be indicted and tried in the county where the victim died (*v*).

While this act does not cover cases of misadventure it was intended to cover the whole ground where the deceased was feloniously destroyed. It does not cover the case where one is stricken or poisoned on the high seas and dies on land. Under such circumstances it was probably always doubtful whether either coroner could be said to have jurisdiction (*w*). Moreover, as already remarked, the act has no application to cases of misadventure, so that where a man was so hurt in one county and died in another there could be no inquest (*x*).

Of course viewing the office of coroner in the ancient light there was no doubt but that if a man was killed in the county of A and his body removed to the county of B it should be taken back to the county of A (*y*), where alone the inquest must be held. This strangely enough leaves the coroner of the county where the body is found wholly without jurisdiction. In this connection it is worth while to refer to the recent case of *Pickett v. Erie County*, 19 W. N. C. 60 (1883) as a strange contrast to this ancient rule (*z*).

(*t*) See *supra*.

(*u*) 4 Statutes of the Realm, page 69 (1548).

(*v*) See 2 Hale's Pleas of the Crown 66.

(*w*) Jervis on Coroners 39.

(*x*) 4 Justices of the Peace (English) 519-536.

(*y*) 2 Hale's Pleas of the Crown 66.

(*z*) For a fuller discussion of *Pickett v. Erie County* and its relation to the old rule see Post, Sect. 70.

CHAPTER III.

THE STATUTE DE OFFICIO CORONATORE.

Sect. 25. Perhaps we have gone too far into the different kinds of coroners without some explanation of their duties and functions. It is difficult, however, to take the subject up from any point of view without meeting continual references to other parts, which, to follow out, would make the discussion of the subject illogical as the Thousand-and-one Nights. We are now arrived at the point, however, where it is no digression to consider the duties, functions and liabilities of the coroner. We have already seen the rise and traced the development of the office to the beginning of the reign of Edward I, or the close of the reign of Henry III (*a*). At this point our history takes on a very definite shape. Two documents present themselves for our consideration, both dealing with coroners in the most minute way. The first of these is Bracton's treatise, the second the so-called statute *de officio coronatore*.

Sect. 26. Before taking up the consideration of these two important authorities it would be well to look for a moment at the statute of Westminster I, chapter ten (*b*). That statute enacts:

"And for as much as mean persons and indiscreet now of late are commonly chosen to the office of coroners, where it is requisite that persons, honest, lawful and wise should occupy such office. It is provided that among all shires sufficient men shall be chosen to be coroners of the most wise and discreet knights, which know, will and may best attend upon such offices and which lawfully shall attach and present Pleas of the Crown and that sheriffs shall have counter rolls with the coroners as well of Appeals as of Enquests, of attachments or of other things, which to that office belong and that no coroner demand nor take anything of any men to do his office upon pain of great

(*a*) See *ante*, Sects. 1 and 13.

(*b*) 2 Statutes of the Realm 40 (1275).

forfeiture to the king" (*c*). There is not the least doubt that this statute is authentic, but its provisions are meagre to say the least. Perhaps these most loyal knights were wise enough to desire some instructions as to how their office was to be executed. Bracton's treatise may have been then in circulation, but it does not seem probable it was in very general circulation; besides it was written in Latin, which few at that time could read. Perhaps it was felt that there was a need for the issuance of instructions to coroners throughout the realm. Whatever was the case, it is highly probable that in the following year the royal government issued instructions to coroners.

When we read these instructions in connection with Bracton's treatise we find the two almost identical. The instructions are almost a transcript from Bracton (*d*). The only things considered in the instructions omitted from Bracton are the valuation of wrecks and the duty to follow the hue and cry both of which are taken from the statute of Westminster I (*d*). It is not surprising, therefore, that Professor Gross should say that the so-called statute of fourth Edward I is supposed to be a transcript from Bracton, slightly altered (*e*). The instructions were, however, printed as the statute of fourth Edward I in the last edition of statutes of the realm (*f*). It is, therefore, necessary that we should be very careful in attacking their authenticity.

Sect. 27. Some authors are of the opinion that Bracton copied his treatise from the statute. Were this a plausible theory it would reconcile the mind to the verbal identity of the two instruments. But as masses were said for the soul of one Henricus de Bracton (*f*) during the reign of Henry III, it is probable that they were for the great lawyer who had died before Edward I came to the throne. It seems likely, therefore, if any copying was done

(*c*) Statute of Westminster I (3 Edward I) c 10, see 2 Hale's P. C. 58. This is said by Lord Coke to be in affirmance of the Common Law 2 Institutes 176-210.

(*d*) 1 Stephens Criminal Law 217.

(*e*) Gross's Introduction to Select Coroners Rolls, XXV and notes.

(*f*) Sir Travis Twiss Introduction to Bracton LXI.

it was the so-called statute which was copied from the treatise. The most important evidence upon the subject is the fact that neither Fleta nor Britton speak of "*de officio coronatore*" nor is it mentioned by later statutes. It seems impossible therefore to escape the conclusion of Sir Travis Twiss in his introduction to the second volume of Bracton. He says he is disposed to agree with the Hon. Daines Barrington in regarding the document "*de officio coronatore*" as a body of instructions for coroners and not properly speaking a constitution. "It is not unlikely that the instructions were drawn up in pursuance of the statute of Westminster the first chapter ten (3 Edward I)" (*g*). Even if this be the case the statute (*h*) is no less instructive as to coroners.

It provides: "These things are to be inquired by the coroners of the lord the king. First, when the coroners of the lord the king have a command from the king's bailiffs, (*i*) or from the good men of the country, to go where any are slain or suddenly dead (*k*) or wounded, or where houses are broken (*l*) or to a place where it is said that treasure is found (*m*) they ought forthwith to go, and to command four of the next towns (*n*) or five, or six, to be before them in such a place; and when they shall be come thither, the coroners ought upon the oath (*o*) of them to make inquiry in this manner, to wit, if it be of a person slain, (*p*) it is first to be inquired where he was slain; to wit, whether it were in a field, or in a house or at any wrestling, or at a tavern, or in any company, and whether any and who were there. In like manner, it is to be in-

(*g*) p. LXI. They were first printed as a part of the Statute of 3 Edward I, Chapter 10.

(*h*) In view of the fact that the instructions are printed in the last edition of Statutes of the Realm they may properly be called a statute.

(*i*) The coroner must be sent for. It is no part of his duty to interfere unless requested, see Post, Sect. 34.

(*k*) As to the meaning of this clause see Post, Sect. 47, and Part II, Chapter VI.

(*l*) See Post, Sect. 35.

(*n*) These composed the jury, and the witnesses, too, see Post, Sects., 50-51-52.

(*o*) See Post, Sects, 50-51-52-53.

(*p*) See Post, Sect. 48.

quired whether any and what persons are culpable either of the fact or of the force, and who were present, men or women of what age soever they be so that they can speak and have any discretion. And how many soever shall be culpable by inquisition in any of the manners aforesaid, shall be taken and delivered to the sheriff and committed to jail (*q*). And such as be found who are not culpable, shall be attached until the coming of the justices (*r*), and the names of all of them shall be written in the coroner's rolls (*s*). But if any such man be slain in the fields, or in the woods, and be found there, it is first to be seen whether he were slain there or not; if he were brought thither, let them trace the steps, if he possibly can, of those who brought the body thither, whether horses brought it or a cart, if perchance it were brought by horse or cart. Let it be inquired also whether the person slain were known, or were a stranger and where he lodged the night before. But if any such be slain, of whose murder any be found culpable, let the coroners immediately go to their houses, and inquire what chattels, they have (*t*) and what corn they have in their grange; and if he be a freeman, what land he hath and what is the annual value of it, and what corn he hath in the ground, and when they have thus inquired of everything, they shall cause the land, corn, and chattels to be appraised, as if they were to be immediately sold, and they shall be delivered to the whole township to answer before the justice for the same; in like manner of the freehold, how much it is worth yearly over and above the service due to the lords of the fee, and let the land remain in the hands of the lord the king until the lords of the fee shall have made fine for it. These things being inquired, the bodies of the persons dead or slain shall be forthwith buried (*v*).

"In like manner it is to be inquired of them that are

(*q*) The coroner was a committing magistrate, Post, Sect. 42.

(*r*) All witnesses and the first finders were to be attached to the coming of the justices, Post, Sects., 34-40-42. Fleta Lib. I Cap. 25, Sec. 4.

(*s*) As to the Coroners Rolls, see Vol. 9 of Selden Society Series "Select Coroners Rolls" and see Post, Sects. 39-40.

(*t*) See Post, Sect. 55.

(*v*) See Post, Chapter VI.

drowned or suddenly dead; and afterwards it is to be seen of such bodies, whether the persons were so drowned or slain or strangled, by the mark on the neck, or by a mark on any of the limbs, or by any hurt found on the body; and so they are to proceed in form aforesaid; if they were not slain, then ought the coroner to attach the finders and all others in company. Of treasure-trove, the coroner ought to inquire who are the finders (*w*), and in like manner who are suspected thereof and this may be well perceived, where one usually haunteth taverns, and hath done so of long time, on such a suspicion he ought to be attached by four or six pledges, or by more, if he can find them. Further, if any be appealed (*x*) of rape, he must be attached, if the appeal be fresh, and if they see sign of truth by effusion of blood, of cry (*y*) raised; and such must be attached by four or six pledges if they can be found; but if the appeal were without cry, and without any manifest sign, then two pledges are sufficient. Upon appeal of wound and such like, if the wound be mortal, the appellee shall be taken immediately, and kept until it be known whether the party hurt shall recover or not, and if he die, the guilty persons shall be kept; but if he recover, they shall be attached by four or six pledges according as the wound shall be. And for a maim, they shall be attached by more than four; and for a simple wound without a maim two pledges are sufficient. Also of all wounds it must be seen what is the length, breadth and depth, and with what weapons the person was wounded (*z*), and in what part of the body; and whether many are guilty thereof, and whether there are many wounds, and who gave them and what sort of wounds; and so ought all things to be enrolled in the coroner's roll. But if any be appealed, he who is appealed of the fact shall be taken; and those appealed of the force shall be safely attached, until the appellee of the

(*w*) Post, Sect. 34.

(*x*) Post, Sect. 38. This proposition is quite different from having an inquest of rape, see Britton 3a.

(*y*) Wherever a rape was committed it was the duty of the injured party to raise the hue and cry.

(*z*) This sounds like an inquest of mayhem, but it undoubtedly refers to appeals.

fact shall be convicted. Concerning horses, boats, carts whereby any one is killed (*a*) which are properly called *vari*, they shall be appraised and delivered to the towns."

"Concerning wreck of the sea (*b*) wheresoever it be found, if any one lay hands upon it, he shall be attached by good and safe pledges and the prices of the wreck shall be valued, and delivered to the towns. But if one be accused of the death of any one, he shall be taken and imprisoned as above. In like manner of all homicides and burglaries, hue shall be levied, as elsewhere is used in England. And all shall follow the hue and cry, if they can do so, and they who shall not, and shall be thereupon convicted that they would not, shall be attached to be before the justices" (*c*).

Bracton's treatise is so identically similar that it would be a waste of time to quote it at length. It is evident, therefore, that the statute is wholly directory and in affirmance of the common law (*d*). It "doth neither restrain the coroner from any branch of his power nor excuse him from the execution of any part of his duty not mentioned in it, which was incident to his office before" (*e*). Therefore, since it was his duty before the statute, it is still his duty to hold inquests upon the bodies of all who die in prison (*f*).

Sect. 28. The provisions of the act are very rigorous as to the seizure of the goods of those suspected or accused of felony, before the inquest. These provisions were repealed by the statute of first Richard III, chapter 3 (*g*).

(*a*) And which were therefore deodand, see Post, Sect. 55.

(*b*) This seems at variance with the view expressed by Professor Gross, *supra*, Sect. 26, note c.

(*c*) 1 Statutes of the Realm 40 (1275), see Bacon's Abridgment Title Coroners, 6 Viner's Abridgment 248.

(*d*) Bacon's Abridgment Title Coroners, 6 Viner's Abridgment 248; Fitzherbert's Abridgment Coroners 421; 2 Coke's Institutes 176-210; 3 Coke's Institutes 52-91; Brooke's Abridgement 168. Staundeford's Pleas of the Crown 51; 1 Hale's Pleas of the Crown 432; 2 Hale's Pleas of the Crown 57; 2 Hawkins's Pleas of the Crown c 9, Sect. 2; 1 East's Pleas of the Crown 381; Bacon on Government 179.

(*e*) Fitzherbert's Abridgment Coroners 421; 2 Hawkins's Pleas of the Crown c 9, Sect. 21; Bacon's Abridgment Title Coroners.

(*f*) Fleta Lib. 1, Cap. 26, Sect. 5; Bacon's Abridgment Title Coroners, 2 Hawkins's Pleas of the Crown, Chapter 9, Sect. 21.

(*g*) 2 Statutes of the Realm 478 (1483), see Jervis on Coroners 33, 234.

That Statute enacts :

“That no sheriff, under sheriff nor escheator, bailiff of franchise or any other person shall take or seize the goods of a person arrested or imprisoned for suspicion of felony before that the same person so arrested or imprisoned be convicted or attainted of such felony according to the law, or else the same goods be otherwise lawfully forfeited upon pain to forfeit double the value of the goods so taken, to him that is hurt in that behalf by action of debt.”

Having now taken a general view of the office and duties of coroners, let us proceed to a more careful consideration of their election, qualifications, functions, rights, duties, privileges and liabilities.

CHAPTER IV.

THE ELECTION AND QUALIFICATIONS OF CORONERS.

Sect. 29. The Statute of Westminster I provides as we have seen (*a*) that in all shires coroners shall be chosen. It is to be presumed therefore, as the statute is in affirmance of the common law (*b*), that it means they are to be elected. In *articuli super cartas* (*c*) the right of electing coroners is confirmed to the counties saving, however, the rights of the king and other lords "who ought to make coroners within their seignories and franchises" (*d*). The statute provides that the coroner shall be chosen by the full county in the county court assembled (*e*), by the commons.

The coroner was to be chosen by the commons and not by the freeholders. Hawkins assures us (*f*) that as the statute was only in affirmance of the common law and as at common law, none but freeholders could vote in the county court, it is beyond doubt that only the freeholders could vote for coroner (*g*). Blackstone says: (*h*) "He is still chosen by all the freeholders in the county court as by the

(*a*) *Ante*, Sect. 26.

(*b*) *Ante*, Sect. 23, note (*x*); Staundeford affirms that prior to the statute poor men were chosen, *Pleas of the Crown* cap. 51.

(*c*) 28 Edward III, c 6 (1354); 1 *Statutes of the Realm* 346, see 2 *Coke's Institutes* 558, and see *ante*, Sect. 23, note (*y*); Hawkins says this act reads as follows: "That all coroners of the counties shall be chosen in the full counties by the commons of the same counties of the most meet and lawful people that shall be found in the same counties to execute the said offices saving always to the King and other Lords who ought to make such coroners in their seignories and franchises" and adds "none but freeholders had votes *F. N. B.* 164, *S. P. C.* 49. For none but such are suitors to the county court 2 *Inst.* 99"; 2 *Hawkins's Pleas of the Crown*, c. 9, Sect. 10.

(*d*) *Britton*, Chapter 1, Sect. 4; *Staundeford's Pleas of the Crown*, Chapter 51; Blackstone says this was in order more surely to effect the preservation of the people's rights against prerogative, 1 *Commentaries* 347.

(*e*) *Britton*, Chapter 1, Sect. 4, and see *Fleta Lib.* II, c 18, Sect. 1.

(*f*) 2 *Pleas of the Crown* c 9, Sects. 9 and 10.

(*g*) See *Staundeford's Pleas of the Crown* 49 and Anonymous 3 *Atkyns* 184 (1744).

(*h*) 1 *Commentaries* 347, citing 2 *Coke's Institute* 558 and *Fitzherbert Natura Brevium* 163, and see *Staundeford's Pleas of the Crown*, cap. 51.

policy of our ancient law the sheriffs and conservators of the peace and all other officers were who were concerned in matters that affected the liberty of the people as venders of the forest still are, whose business it is to stand between prerogative and the subject in the execution of the forest laws."

On the death or removal of a coroner (i) there is a writ at common law *de coronatore eligendo* in which it is expressly commanded the sheriff "*quod talem eligi faciat qui melius et sciat et velit et possit officio ille intendere*" (k). This writ proceeded out of Chancery directed to the sheriff (m). The writ was usually in the following form (n).

Rex Vic. &c. Quia L. nuper unus coronatorium nostr' in com' tuo diem clausit extremum ut acceptimus. Tibi praecipimus quod Si ita est tunc in pleno com' tuo de assensu ejusdem com' loco ipsius L. eligi fac' unum alium coronatorem juxta formam statui inde edit & provisi qui praestito sacrament' prout moris est, extunc ea fac' & conservet quae ad officium coronatoris pertinent in com' praedict & talem eum eligi fac' quo melius sciat & possit officio illi intendere & nomen ejus nobis scire fac'.

TESTE.

The election was upon view or by poll as of knights of parliament (o) or verderors (p). The sheriff then certified the election back to chancery (q). The coroner is

(i) Register 177, Fitzherbert's *Natura Brevium* 163, K., Comyns Digest Title Office G. 3.

(k) See *supra*, note (h).

(m) Bacon's Abridgment Title Coroners (A).

(n) The form here given is that in Fitzherbert's *Natura Brevium* p. 163, for a similar form see Bacon's Abridgment Title Coroners (A); see Jervis on Coroners 13 and 14.

(o) In early times in Pennsylvania coroners were chosen in the same manner as members of the General Assembly.

(p) Comyns Digest Title Officer G. 3.

(q) Fitzherbert's *Natura Brevium* 163 K.; Staundeford's *Pleas of the Crown* cap. 51, Comyns Digest Title Officer G. 3. For a modern account of an election of a coroner see *Salop's Case* 3 Swanston 181. For the mode of election oath see *Selden Coroners Rolls*, 32, 99, 105; *Rot. Claus.*, Vol. I, pp. 366, 368, 402, 409, 414, 419 (bis), 463, 506, 560, 622, 648, Vol. II; 69-91-105-119-121-126; *Cooper Records*, Vol. I, 121; *Britton*, Book I, page 8; 1 *Statutes of the Realm*, 346; *Rot. Parl.*, Vol. II, p. 260; in a few cases the King seems to have appointed the coroner; *Selden's Coroners Rolls*, 91 *Rot. Claus.*, Vol. I, p. 560.

elected for the county at large (*r*) and is chosen for life (*s*). In the close rolls the new elections are often said to be due to death, illness, inefficiency or insufficient qualifications (*t*). Elected he is to be sworn by the sheriff (*u*) that "he will lawfully do what belongeth to the office of coroner" (*v*). But though the coroner is elected by virtue of the king's writ and his election would be void otherwise he draws his authority from the election and not from the king (*w*) and not being created by commission, he retains his office when the king dies (*x*).

Sect. 30. While the freeholders had the privilege of electing their coroner their choice was originally a limited one. Everybody was not eligible to the office. "In ancient times" says Coke (*y*) "they were knights, honest, loyall (*sic*) and sage." The Statute of Merton assumes that all coroners are knights (*z*) and that of Westminster I, specifically directs that they shall be (*a*). It was held sufficient

(*r*) The county was not divided into coroners districts, *ante*, Sect. 23, note (h). See Wrote *v.* Wiggles, 4 Coke's Reports 46b (1592), and see Comyn's Digest Title Officer G.

(*s*) Gross's Introduction to Select Coroners Rolls, XX; 1 Blackstone's Commentaries 348.

(*t*) See also Northumberland Rolls, 68; Eyton, Shropshire, Vol. IV, p. 118.

(*u*) 14 Edward III c. 8 (1340); 1 Statutes of the Realm 283, Fitzherbert Natura Brevium 164; Staundeford's Pleas of the Crown cap. 51.

(*v*) Britton Chapter I, Sect. 4, Staundeford's Pleas of the Crown 49; 2 Hale's Pleas of the Crown 55; 4 Coke's Institutes 271; Fitzherbert Natura Brevium 163; 2 Hawkins's Pleas of the Crown c 9, Sect. 7.

(*w*) Bacon's Abridgment Title Coroners (A) and cases there cited and see *ante*.

(*x*) See *ante*, Sect. 24, note (n); Brooke's Abridgment "office" pl. 25, citing 4 Edward IV, 43 and 44; 2 Coke's Institutes, 175 d, 4 Coke's Institutes 271; 2 Hale's Pleas of the Crown 55; 2 Hawkins's Pleas of the Crown c 9, Sect. 5; 1 Elizabeth fol. 152, pl. 2; Anonymous Daliston 15 pl. 7; Tombes *v.* Etherington, 1 Levinz, 120 (1663). Resolutions at Sergeant's Inn. Dyer 165, (1558); but Staundeford is of contrary opinion saying that the coroner is removable at the King's option and his office ceases when the King dies, see Pleas of the Crown cap. 51.

(*y*) 2 Coke's Institutes 32.

(*z*) 1 Statutes of the Realm 29; see *ante*, Sect. 13, Henry III generally orders the sheriff to cause a knight to be elected, Gross's Introduction to Select Coroners Rolls, XX, note 6.

(*a*) *Ante*, Sect. 26.

cause to remove a coroner that he was not a knight (*b*). In Edward III's time no coroner could be a justice (*c*).

Concerning this requirement that he be a knight, Fitzherbert tells us (*d*) that the words are put into the statute in order that he might have sufficient lands in the county, for every knight must have lands of at least the value of £20 a year (*e*). This rule was not as rigid as it seems. Every man of full age who owned a knight's fee could be forced to become a knight by common law. This was confirmed by the statute of 1 Edward II, Chapter I (*de militibus*) (*f*). From this fact arose, strange as it may seem, the degradation of the office of coroner; for if a man who was not a knight and who had sufficient lands were elected coroner he could qualify for the office by becoming a knight. Little by little the custom of requiring the degree of knighthood of those who had sufficient lands, became obsolete by the granting of indulgences to those who did not wish to become knights from whence a large part of the king's revenue arose (*g*). When the reason for the rule had been served by causing men of substance to be chosen coroners, the rule itself fell into decay (*h*). The statute of 14 Edward III provided, "That no coroner of the counties shall be chosen unless he have land in fee sufficient in the same county whereof he may answer all manner of people" (*i*), but says nothing about knighthood. The coroner must still be a man of substance, but it is to be noticed the precise amount is not named. "It is to be enough to maintain

(*b*) 23 Assize 7, Register 177, Fitzherbert *Natura Brevium* 164; Staundeford's *Pleas of the Crown* cap. 51; 4 Coke's *Institutes* 271; but this is no longer the case. *Borough & Holcroft's Case*, 2 Leonard 160 (1579); 1 Blackstone's *Commentaries* 347, and see *infra*.

(*c*) Rot. Parl., Vol. II, p. 265.

(*d*) *Natura Brevium* 164, and see Bacon's *Abridgment Title Coroners* (A).

(*e*) Statute *de Militibus*; 1 Edward II, 1 Statutes of the Realm 229.

(*f*) 1 Statutes of the Realm 229.

(*g*) Jervis on *Coroners* 10.

(*h*) Staundeford's *Pleas of the Crown* 48c; Fitzherbert *Natura Brevium* 164; 2 Coke's *Institutes* 176; 2 Hale's *Pleas of the Crown* 55; 2 Hawkins's *Pleas of the Crown*, c. 9, Sect. 3.

(*i*) Statute 1 c 8. 1 Statute of the Realm 283 (1340).

his office and answer any fine that may be set upon him for misbehavior" (*k*). By degrees therefore (*l*) the custom of electing a knight to be coroner fell out of use. So that it came to be no objection to a person chosen coroner that he was not a knight (*m*). It is possible that the opinion is correct that the provision as to knighthood was inserted to protect the counties (*n*) for it is certain that if the coroner misbehaved and was unable to pay the fine the county by which he was elected had to answer for him (*o*) upon the principle of *respondeat superior* (*p*).

Knighthood was not the only qualification required of coroners. "The Statute of Westminster the first directs they should be knights, but that is out of use" (*q*). By the statute of 28 Edward III, chapter 6, they ought to be lawful and fit men (*r*). Lord Coke tells us that a coroner should be "(1) *Probus homo*, (2) lawful, *i. e. legalis homo*, (3) of sufficient understanding and knowledge (*s*), (4) of good ability and power to execute his office according to his knowledge, (5) of diligence and intendance for the due execution of the said office (*t*)."¹ For the law regarded them so highly (*u*) that "it not onely (*sic*) required expert men to be coroners, but men of sufficient ability and livelihood for three purposes. (1) The law presumes that they will do their duty and not offend the law, at least for fear of punishment whereunto their lands and goods be subject. (2) That they be able to answer to the king all such

(*k*) Jervis on Coroners 12.

(*l*) Because if he had lands sufficient he at first could be forced to become a knight and later could secure an indulgence; Jervis on Coroners 10.

(*m*) Borough & Holcroft's Case, 2 Leonard 160 (1579); 2 Hawkins's Pleas of the Crown c 9, Sect. 3; Bacon's Abridgment Title Coroners (A).

(*n*) 2 Coke's Institutes 175.

(*o*) 2 Coke's Institutes 175; 2 Hale's Pleas of the Crown 55; Jervis on Coroners 12.

(*p*) 2 Coke's Institutes 174-5; 2 Hale's Pleas of the Crown 56; 2 Hawkins's Pleas of the Crown c 9, Sect. 8.

(*q*) 2 Hale's Pleas of the Crown 55.

(*r*) *Ibid.*

(*s*) And see Register, 177; Fitzherbert Natura Brevium, 164; Staundeford's Pleas of the Crown, 48c.

(*t*) 2 Coke's Institutes, 174.

(*u*) *Tempo*, Edward I.

finer and duties as belong to him and to discharge the county thereof wherewith the county being their electors were chargeable. (3) That they might execute their office without bribery (*v*)."

Nor was this all: if the coroner so far engage in any other public business in the county that he cannot have leisure enough to attend to the office of a coroner, or if chosen verderor of the forest (*w*) or justice (*x*) or if he have not sufficient lands whereon to live according to his state and degree (*y*) or if he follows a common trade, he cannot be coroner (*z*). From this it would seem that the office was held in great esteem in ancient times (*a*). Coke says, "they ought in ancient times to be knights, honest, loyall and sage * * * *et qui melius sciat et velit et possit officio illi intendere* for this was the policy of prudent antiquity that officers did ever give grace to the place and not the place only to grace the officer" (*y*). In the fifth year of King Edward III a common merchant being chosen a coroner was removed from office "*per quod communis mercator erat*" (*b*). Though the office was considered so honorable—Chaucer in speaking of Franklyn says, "a shirieve had he been and a coronour"—it was evidently regarded as a burden—for many persons obtained royal grants which exempted them from acting as coroners (*c*) and in 1221 a coroner paid a fine to be removed from office (*d*). The office did not seem to suit with a white ruff and laced sleeves, mere duty seldom rules men's minds: so that, as Blackstone says (*e*) "though it be it be culpable neglect, gentlemen of property do not desire this office and it has

(*v*) 2 Coke's Institutes, 175.

(*w*) Register 177, Fitzherbert Natura Brevium, 163-4; Staunford's Pleas of the Crown, 40; Griesley's Case, 8 Coke's Reports, 41 (1598); 2 Coke's Institutes, 32; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 12; 1 Blackstone's Commentaries, 348.

(*x*) Rot. Parl., Vol. II, p. 265.

(*y*) 2 Coke's Institutes, 32.

(*z*) 2 Coke's Institutes, 32.

(*a*) 2 Coke's Institutes, 32; 4 Coke's Institutes, 271.

(*b*) 5 Edward III, nu. 38; Register, 177; 2 Coke's Institutes, 32.

(*c*) Roles Gascons (ed. Michel), 45-124-291-297-300-468.

(*d*) Pleas of Gloucester, 109.

(*e*) 1 Commentaries, 348.

fallen into disrepute, so that although formerly no coroner would have stooped to lucre and by the statute of Westminster I (*f*) they were expressly prohibited from receiving any reward under pain of great forfeiture to the king, yet for many years past they have only been chosen to the office for the sake of its perquisites being allowed fees for their attendance by 3 Henry VII, c. 1 (of which Sir Edward Coke complains heavily)" and adds cynically "though since his time those fees have been much enlarged."

Sect. 31. The coroner is chosen for life (*g*) but may be removed (1) by being made sheriff (*h*) or verderor (*i*), which are offices incompatible with that of coroner (*k*), (2) by the king's writ *de conoratore exonerando* (*l*) for a cause to be therein assigned (*m*) or (3) by the election of a new coroner in his place which *ipso facto* removes the old one (*n*). The following forms of the writ *de conoratore exonerando* are given by Fitzherbert (*o*) and are probably the most approved.

Rex Vic &c. Quia R—unus coronatorum nostorum com' tui divers negotiis nostris in com' tuo faciend' ita occupat est quod ea quae ad Officio coronatoris in eodem com' pertinent exercend vacare non potest, pro certo intelleximus ipsum ab officio illo amovimus. Tibi praecipimus quod unum alium coronatorem etc. (ut supra vel sic).

Qui ex testimonio accipimus fide digno quod W. T.—unus coronatorum nostrorum com' tui adeo languidus est & senio confectus quod ea &c. exercend' non sufficit ipsum W.

(*f*) The statute intended here is evidently 4 Edward I. It will be remembered that statute is sometimes spoken of as the 26th Chapter of Westminster I.

(*g*) 1 Blackstone's Commentaries, 348.

(*h*) Register, 177b; Fitzherbert Natura Brevium, 164 N; 1 Blackstone's Commentaries, 348.

(*i*) Register, 177b; Fitzherbert Natura Brevium, 164 N; Staundeford's Pleas of the Crown, 48; 2 Coke's Institutes, 32; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 12; 1 Blackstone's Commentaries, 348; Griesley's Case, 8 Coke's Reports, 41 (1598).

(*k*) 1 Blackstone's Commentaries, 348.

(*l*) Fitzherbert Natura Brevium, 163-4; 1 Blackstone's Commentaries, 348; Sprecot's Case, 5 Coke's Reports, 58b (1590).

(*m*) 1 Blackstone's Commentaries, 348.

(*n*) Anonymous, Godboldt, 105 pl. 123 (1586).

(*o*) Natura Brevium, 163-4.

duximus ab officio illo removend'. Et ideo tibi praecipimus &c. (vel sic).

Quia W—unus coronat' &c. minus idone' est ad offic' illud exequend sicut ex relat & (vel sic).

Quia acceptimus quod w coronat' com' praedict' nuper elect terr vel tenementa in modo com' non habet in quibus juxta statum suum morari possit pro praedict' offic' exercend Tibi praec' etc. (vel sic).

Quia A unus coronat' &c. morbo paralyss percuss &c. (vel sic).

Quia in extremis partibus totius com' morat per quod ea quae ad offi' &c. commode exercer' non protest (vel sic).

Quia in officium vic' com' praedict est electus (vel) in viridarae forest' nostr' des. electus extitit per quod &c. (vel).

Quia non habet centum sol' terre ut dic (vel).

Quia non est miles &c. (p).

The causes for removal which might be used as the basis of the writ *de coronatore exonerando* were (1) that he is engaged in other business (*q*), (2) is incapacitated by years (*r*) or sickness (*s*), (3) that he has not sufficient estate in the county (*t*) or lives in an inconvenient part of it (*u*), (4) that he is "*communis mercator*" (*v*), (5) that

(*p*) But only one case is recorded where this was made the cause of removal, 2 Coke's Institutes, 32, and that was in the reign of Edward III.

(*q*) Register, 177a; Fitzherbert *Natura Brevium*, 163 N. Staunford's Pleas of the Crown, 48; 2 Coke's Institutes, 32; 1 Blackstone's Commentaries, 348; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 12. and see Griesley's Case, 8 Coke's Reports, 41 (1598).

(*r*) Register, 177b; Fitzherbert *Natura Brevium*, 164 N; Staunford's Pleas of the Crown, 48; 2 Coke's Institutes, 32; 1 Blackstone's Commentaries, 348; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 12.

(*s*) Register, 177b; Fitzherbert *Natura Brevium*, 164 N; 1 Blackstone's Commentaries, 348; Griesley's Case, 8 Coke's Reports, 41 (1598).

(*t*) Register, 177; Fitzherbert *Natura Brevium*, 163-4; Staunford's Pleas of the Crown, 48; 2 Coke's Institutes, 32; 1 Blackstone's Commentaries, 348; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 12; Griesley's Case, 8 Coke's Reports, 41 (1598).

(*u*) Register, 177b; Fitzherbert *Natura Brevium*, 164 N; Staunford's Pleas of the Crown, 48; 1 Blackstone's Commentaries, 348, or out of it see Anonymous, 3 Atkyns, 184 (1744).

(*v*) 2 Coke's Institutes, 32; Comyns' Digest, Title Officer, G. 4.

he is *minus* *idoneus* (*w*), (6) or misbehaves himself (*x*). Indeed during the period we are considering the sixth was probably not a cause for removal, it having first been created such in 1752 by the statute of 25 George II, chapter 20 (*y*) which made extortion, neglect or misbehavior causes for removal (*z*). Hugh de Muscham, coroner of Derbyshire, was removed from office by virtue of the king's writ without specifying any cause (*a*). The calendars of Close Rolls of Edward II's time indicate that many coroners were removed from office when the new king came to the throne, but during the rest of the reign such changes were infrequent (*b*). Edward II was deposed from his throne. Staundeford suggests (*bb*) that "it would be more commendable in him who is elected coroner if he perceive in himself any of the aforesaid impediments for him to purchase for himself a writ of discharge from his said office (*c*).

In 1351 the commons prayed that sheriffs, coroners and escheators should be changed annually. Statutes have come down to us as to sheriffs and escheators, but none as to coroners (*cc*).

Where it is sought to remove a coroner from office, a suggestion is filed in chancery, alleging the cause. This suggestion is not traversable (*d*), but if it be false the coroner can have a commission out of chancery to inquire into

(*w*) Register, 177; Fitzherbert *Natura Brevium*, 163 N; 2 Coke's Institutes, 176; Sprecot's Case, 5 Coke's Reports, 58b (1590).

(*x*) 1 Blackstone's Commentaries, 348; see Anonymous, 3 Atkyns, 184 (1744). There is some doubt raised by this case as to whether the Chancery had a right to remove a coroner, but seems to decide it could.

(*y*) 20 Statutes at Large (Eng.), 235.

(*z*) See 1 Blackstone's Commentaries, 348.

(*a*) Gross's Introduction to Select Coroners Rolls, XX; and Staundeford says this was legal, Pleas of the Crown, 48.

(*b*) Calendar of Close Rolls (1307-13) 13-165-381-406-470, &c.

(*bb*) Pleas of the Crown, cap. 51.

(*c*) Which writ he tells us is to be found in the Register, folio 177.

(*cc*) *Supra*, note (*a*) and Staundeford says that the act did not pass.

(*d*) 2 Hale's Pleas of the Crown, 56; Fitzherbert *Natura Brevium*, 163; Sprecot's Case, 5 Coke's Reports, 58b (1590); but this note is found in Sergeant Hill's copy of Coke's Reports: "This is not war-

the truth of it (*e*) which acts as a supersedeas if the suggestion is disproved (*f*). Some go so far as to say that the king must make it a supersedeas to the sheriff that he do not remove the coroner, and if the sheriff has already removed him from office, that he suffer him to execute his office as he did before (*g*).

It was possible, therefore, that it might be uncertain who was the coroner and it seems upon principle that this question should have been tried by the record. It is said, however, that coroner or not coroner should be tried by the county from which he is chosen (*h*), though this, it seems, should rightly apply only to cases where the question arose out of the election of a coroner.

ranted by F. N. B. 163. It is extraordinary that there is a note there that the cause is not traversable and vouches, 5 Co. 58, for it, and the notes are always said to be written by Lord Hale. I have compared F. N. B. with old editions which agree with the more modern, and the vouching these cases is absurd." But, however absurd it is, the rule was made law in *ex parte* Purnell, 1 Jacobs & Walker, 431 (1820).

(*e*) Fitzherbert Natura Brevium, 164 D; Staundeford's Pleas of the Crown, 48-49; and he must have notice of the suggestion, Anonymous, 3 Atkyn, 184 (1744).

(*f*) Fitzherbert Natura Brevium, 164 D; 2 Hale's Pleas of the Crown, 56.

(*g*) Register, 177b-178a; Staundeford's Pleas of the Crown, 49; Fitzherbert Natura Brevium, 164; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 13.

(*h*) Where it was alleged one was not coroner at the time at which the issue was taken, this issue shall be tried *per pares* and not by the record, for if the writ *de coronatore elegando* have not been returned, which often happens, the record will be false, 32 Henry VI, 27 *vide* The Coroner's Case; Jenkins's Century Cases, 90 pl. 721.

CHAPTER V.

THE FUNCTIONS OF CORONERS.

Sect 32. It is now necessary to direct the attention to the functions of the coroner. In so doing we will consider, first, their functions in general; (*a*) second, their authority and duties, (*b*), third, their liabilities (*c*); fourth, their powers (*d*) and fifth, their rights and privileges (*e*). "The office and powers of coroner" says Blackstone (*f*), "are also like those of sheriffs, judicial or ministerial, but principally judicial. This is in great measure ascertained by the statute of 4 Edward I."

Sect. 33. "Their jurisdiction by 4 Edward I," says Lord Hale (*g*) "is 1, of the death of a man by felony or misfortune, 2, treasure trove, 3, appeals of rape, 4, appeals *de plagis* and *mahemio*, 5, of deodands, 6, of wreck of the sea, 7, by some of breaches of prison (*h*)."
To set forth at large the different descriptions of their powers by the many authorities (*i*) who have described them would be tedious, but it may perhaps be well to enumerate the various powers attributed to them. They are said to have power to record of all pleas of the crown (*k*), to take inquisitions of

(*a*) Post, Sect. 33.

(*b*) Post, Sects. 34-35-36-37-38.

(*c*) Post, Sect. 39.

(*d*) Post, Sects. 40-41-42.

(*e*) Post, Sects. 43-44.

(*f*) 1 Commentaries, 348, citing 4 Inst. 271; Ld. Raym. 1305.

(*g*) 2 Pleas of the Crown, 57.

(*h*) And see 2 Hale's Pleas of the Crown, 65-435; Hale's Summary, 170-1; Fleta lib. 1 c. 26, Sect. 5; Staundeford's Pleas of the Crown, 51; 2 Coke's Institutes, 32; 4 Coke's Institutes, 271; Comyns' Digest, Title Officer, G. 8; Umfreville Lex Coronatoris, 210, for the death many have been caused *per dure Guard*.

(*i*) Bracton, Britton, Fleta, Mirror, Staundeford, Fitzherbert, Coke, Hale, Umfreville, Hawkins, Jervis, have all defined the duties of coroner in the most unique way.

(*k*) In the tourn Gilbert's Historical View of the Exchequer, 80; and see Mirror, c. 1, Sect. 13, and 4 Edward I, Sect. 1.

death, (*l*) and *felo de se* (*m*), of wounding (*n*), *rape* (*o*), arson (*p*), housebreaking (*q*), prison breach (*r*) and other felonies (*s*), of treasure trove (*t*), wreck of the sea (*u*), and royal fish (*v*), appeals of murder or manslaughter (*w*), wounds (*x*), maim (*y*), robbery (*z*), rape (*a*) or other felonies (*b*), to impose abjurations (*c*), to receive confessions in sanctuary (*d*), the confessions and appeals of an approver (*e*), but not of treason even by special writ of the King (*f*) to receive proof of Englishery (*g*), forfeiture (*h*), deodands (*i*), to award a *capias* and *alias* and thereupon demand the defendant at five counties and outlaw the defendant (*k*), to record the nonsuit of the plaintiff in an

(*l*) Bracton, f. 121; 4 Edward I, Sect. 1; Mirror, c. 1, Sect. 13; Staundeford's Pleas of the Crown, c. 51; Fleta, Book 1, Chapter 25, Sect. 1.

(*m*) Gilbert's History View of the Exchequer, 80.

(*n*) Mirror, c. 1, Sect. 13; Bracton, f. 121b; 4 Edward I, Sect. 1; Britton, c. 1, 5-39; Fleta, Book 1, Chapter 25, Sects. 1 and 15.

(*o*) Britton, c. 1, Sect. 5; Fleta, lib. 1, Cap. 25, Sect. 14.

(*p*) Mirror, c. 1, Sect. 13.

(*q*) Bracton, f. 121b; 4 Edward I, Sect. 1.

(*r*) Britton, c. 1, Sect. 5; 2 Hale's Pleas of the Crown, 57.

(*s*) Mirror, c. 1, Sect. 13; Britton, c. 1, Sect. 5.

(*t*) Mirror, c. 1, Sect. 13; Bracton, f. 121 b. 1; 4 Edward I, Sect. 2; Fleta, Book 1, c. 25, Sect. 1.

(*u*) Mirror, c. 1, Sect. 13; 2 Hale's Pleas of the Crown, 57.

(*v*) Britton, c. 1, Sect. 42.

(*w*) Britton, c. 1, Sect. 15; Staundeford's Pleas of the Crown, c. 52.

(*x*) Bracton, f. 121b; 4 Edward I, Sect. 2.

(*y*) Bracton, f. 121b; 4 Edward I, Sect. 2.

(*z*) Britton, c. 1, Sect. 15.

(*a*) Bracton, f. 121b; 4 Edward I, Sect. 2; Britton, c. 1, Sects. 5-38; 2 Hale's Pleas of the Crown, 57; Fleta, Book 1, Chapter 25, Sect. 14; Staundeford's Pleas of the Crown, c. 52.

(*b*) Mirror, c. 1, Sect. 13.

(*c*) Mirror, c. 1, Sect. 13; Staundeford's Pleas of the Crown, c. 51.

(*d*) Britton, c. 1, Sect. 36.

(*e*) Britton, c. 1, Sect. 36; Staundeford's Pleas of the Crown, c. 51.

(*f*) 2 Coke's Institutes, 629; 6 Viner's Abridgment, 246.

(*g*) Britton, c. 1, Sect. 35.

(*h*) 4 Edward I, Sect. 1; Bracton, f. 121b; Britton, c. 1, Sect. 13.

(*i*) Britton, c. 1, Sect. 28; Mirror, c. 1, Sect. 13.

(*k*) Britton, c. 1, Sects. 17, 18, 19, 20, 21, 22; Mirror, c. 1, Sect. 13; Gilbert's Historical View of the Exchequer, 80; Staundeford's Pleas of the Crown, c. 51.

appeal by bill before him (*l*), and all judgments of death given in his jurisdiction (*m*).

All these things may be classified into four general heads: 1. The power to take inquests (*n*); 2. to receive and record appeals (*o*); 3. as to outlawry (*oo*); 4. as to sanctuary and abjurations (*p*).

Certain matters, however, remain to be noticed before commencing the consideration of these powers *seriatim*. The office and duties of coroner have been, as we have seen, from the first a live and growing thing, they have altered from time to time (*q*). We ought not to be surprised to find, then, that in the early days, before his office had wholly ceased to be connected with the idea of judgeship of the county court, he sometimes convened the hundred for business and even held the sheriff's torn (*r*) or that he conducted civil jury trials (even after 1215) (*s*). They were comptrollers to the sheriff, keeping a record of the fines and amercements in the sheriff's court.

Whatever his powers are, at any given time, they cannot be enlarged by special delegation from the crown (*t*)

(*l*) 2 Hale's Pleas of the Crown, 67; Saundeford's Pleas of the Crown, c. 51.

(*m*) Britton, c. 1, Sect. 40. This sounds very fierce, but the object was that all the minor courts which had power of life and death might not pass sentence until the coming of the Justices, and they were then met by the coroners' roll and the Justices passed upon the correctness of the judgment. Umfreville's note to this section.

(*n*) Post, Sects. 34-35.

(*o*) Post, Sect. 36.

(*oo*) Post, Sect. 37.

(*p*) Post, Sect. 38.

(*q*) For the functions of coroners in the reigns of John and Henry III, see Rotuli Curiae Regis, Vol. I, pp. 51-418; Selden's Pleas, pp. 3-9-19-28-33-45-63-70-84-88-100-117; Pleas of Gloucester, 4-15-20-47-78-94-115.

(*r*) Selden's Pleas, 68-70.

(*s*) Bracton's Note Book, Vol. II, pp. 277-389-420-425-452-466-516-571-572-627-675-682; Vol. III, pp. 151-155-228-264-473; Salt. Soc., Vol. IV, pp. 84-95-97; Dugdale's Monasticon Anglicae, Vol. VI, p. 2. In 1305, the king ordered an inquiry whether coroners put poor people on juries to spare the rich.

(*t*) 2 Coke's Institutes, 629; Finch Law, 388. So no coroner, though he have a special commission from the crown, can take a confession of high or petit treason, Umfreville Lex Coronatoris, 155 *sed quare* 19 Henry VI, 47f.

yet where the body cannot be viewed (*u*) a commission from the king obviates the objection to the coroner's jurisdiction (*v*), but this is not because he is coroner, but because the king had the right to appoint a commissioner to inquire.

Sect. 34. The first of the powers or duties of the coroner is the power to take inquests. We have already seen (*w*) that there were from two to six coroners in every county. The six coroners constituted but one officer, yet any one coroner might sit in cases of inquests, an inquest taken by one coroner was good (*x*). Indeed it was so good that if thereafter another one or more of the coroners took an inquest on the same body the second inquest was void (*y*).

It was the duty of the coroner when he was notified (*z*) that one had been slain (*a*) or was suddenly dead (*b*) to hold an inquest upon the body (*c*). But he was not required to hold his inquisition *ex officio* unless he was notified

(*u*) The coroner cannot take his inquisition if there can be no view of the body.

(*v*) 2 Hawkins's Pleas of the Crown, c. 9, Sect. 25.

(*w*) *Ante*, Sect. 23.

(*x*) Bracton Retorn de Briefs, pl. 42; 14 Henry IV, 34; Jenkins, 85, pl. 65; Staundeford's Pleas of the Crown, 53a; 2 Hale's Pleas of the Crown, 56-66.

(*y*) 14 Henry IV, 34-35; 3 Henry VI, 6-40-41-42; Fitzherbert Abridgment, 107; Staundeford's Pleas of the Crown, 52; 2 Hale's Pleas of the Crown, 56-58-59-67; Hale's Summary, 172; 1 Hawkins's Pleas of the Crown, c. 1, Sect. 10; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 45.

(*z*) 4 Edward I, Sect. 1, says when the coroner have "command" of the king's bailiffs or from good men of the county, and see Britton, c. 1, Sect. 5, "upon notice of a felony or misadventure"; Mirror, c. 1, Sect. 13, "warned"; Bracton, f. 121b, "receive a mandate from the bailiff," or from "prud Hommes" of the neighborhood, and see Fleta, Book I, c. 25, Sect. 1.

(*a*) Bracton, fol. 121b; 4 Edward I, Sect. 1; Britton, c. 1, Sect. 5; Fleta, lib. 1, cap. 25, Sect. 1; Mirror, c. 1, Sect. 13.

(*b*) By felony or mischance, Mirror, c. 1, Sect. 13, "suddenly dead"; 4 Edward I, Sect. 1, whether by felony or misadventure; Britton, c. 1, Sect. 9, and if he died by misadventure it is to be further inquired by what accident, whether by drowning or by a fall or by killing without other prepense malice, or was a felon on himself, Britton, c. 1, Sects. 26-27-28.

(*c*) Regularly he can only take inquisitions touching the death of a man and persons *subito mortuus* and some special incidents thereto,

to do so (*d*). The inquisition must be *super visum corporis*, and if the body could not be found the coroner could not sit (*e*). East is of the opinion that if the party died of a fever or apparent visitation of God there is no call for the coroner to act (*f*). In this proposition he is partly right. If the party died of a fever he died a natural death, and though it might seem sudden its suddenness cannot be compared with that of death by murder or unforeseen violence. It cannot be said that every case of death by visitation of God is not a fit subject of inquisition by the coroner. John Doe goes to the fields, and, being taken with the "falling sickness," he falls down and dies. Well and good, but the "falling sickness" may have been due to poison (*g*). It would not be proper to say that every case of sudden death should be investigated. Bracton, indeed, says (*h*) and his remark is in *ipsis verbis* with the statute of 4 Edward I (*i*) "where one is slain or suddenly dead." They mention as the means of coming to this end, wounding, drowning and strangling, and suggest that this may be determined by the marks upon the body. There is absolutely nothing in the statute nor in Bracton to indicate that a death otherwise than by violence at the hands of another is contemplated except the unexplained words "suddenly dead." The

(*d*) Queen *v.* Clerk, 1 Salkeld, 377 (1702). See 1 East's Pleas of the Crown, 378.

(*e*) 1 Blackstone's Commentaries, 348, citing 4 Inst. 271; 2 Ld. Raymond, 1305; Welchmen's Case, Latch. 166 (1662); s. c. Popham, 209 (1656), citing 6 Richard II, coron f. 107; 2 Richard III, f. 2; 21 Edward IV, f. 70, and see Staundeford's Pleas of the Crown, Book 2, cap. 52.

(*f*) 1 Pleas of the Crown, 378. In opposition to this view we find: "If a person die suddenly tho it be of fever and the township bury him before sending for the coroner the whole township shall be amerced." Itin North Coron 3, 19 note; 2 Hale, 57. But this case is misprinted and Hale says he himself had seen the transcript at large "which in *libro meo* f. 52b is *morust de feyne, i. e.,* starved by hunger," and the coroner need not be sent for in every case, but only if the death be unnatural or violent, 2 H. P. C. 57; and Blackstone says: "The inquiry must be made in all cases of persons coming to sudden or violent death," in what manner soever he came to his death, 4 Commentaries, 274. And Fleta goes to considerable length to tell what must be done in case a man die by misfortune, lib. 1, Cap. 25, Sect. 9.

(*g*) For a more complete discussion of this point see Post, Part II, Chapter VI.

(*h*) f. 121b.

(*i*) 1 Statutes of the Realm, 40 (1275).

mind at once reverts to the possibilities of poisoning. Poisoning is not referred to in these early authorities, but there is no doubt that felonious homicide and cases which may be felonious homicide, should be inquired of by the coroner, and it would seem that the words "suddenly dead" covered a case of possible poisoning. The Mirror says (*k*) the inquest is to be taken of those dead by "felony or mischance." We have here a ground upon which Mr. East's pernicious theory could be built. One who dies a sudden and unexplained death does not of necessity die by felony or by mischance. It might be said then that where one died without the infliction of external injuries and the jury returned a verdict of natural death, the inquest was improperly held. At the time which we are considering this question was of little importance, it was only when in after centuries, the unfortunate system of the compensation of coroners by fees per inquest had been installed, that the question became paramount. Britton says, (*l*) where a "felony or misadventure do happen" and is therefore in exact line with the Mirror as to this proposition. But while we must admit that all these old authorities are not directly opposed to Mr. East's theory, it is worth while to notice that Mr. East is the first to suggest that "sudden" death is not the test for the coroner's action. Besides, it is not the duty of the coroner to act until called upon to do so (*m*). Perhaps the true rule is that the coroner should take inquisitions of "people coming to an untimely end" (*n*).

It has been said that when the coroner was notified of an untimely death he was to hold an inquisition on the body if found (*o*). Our curiosity is naturally aroused to ask who was to notify the coroner? We are told by recent visitors in China, that in Chinese cities crime is unusual be-

(*k*) C. 1, Sect. 13.

(*l*) C. 1, Sect. 5.

(*m*) *Supra*, note (*d*).

(*n*) Gilbert's Historical View of the Exchequer, 80; see 6 Viner's Abridgment, 246-7. The author's objection to East's theory is that it excludes from the consideration of the coroner well planned murders which look like natural deaths.

(*o*) If the body was not found there could be no inquest. Post, Sect. 45.

cause of the simple and almost certain method of detection. The cities are divided into precincts, which are very small, at the entrance to which are gates, where a porter is constantly in attendance. It is the duty of the victim of every crime but murder, to raise a cry. In case of murder the first finders raise the cry. On hearing this cry, the porter instantly closes the gates and detains every one in the precinct as do the neighboring porters. As soon as the police arrive they investigate the enclosed district until the criminal is produced and until that time the gates remain closed. Were modern American criminal methods in vogue in China, those gates would be in danger of being closed permanently, but our informants tell us the criminal is always produced. A very similar system was in force in early times in England (*p*). If homicide were committed in an enclosed town by day or by night or in any other town by day and the offender were not caught, the town or ville was amerced and if it were not sufficient the hundred and even the county (*q*). The enclosed town was held to closer accountability because at night the gates were supposed (*qq*) to be shut and in the day it was very easy to shut the gates when the hue and cry was raised. The hue and cry ought to be raised in an unenclosed town as well. It was the duty of the whole town to pursue the criminal and so from town to town until he was caught. When an unnatural death happened it was the duty of the township upon pain of amercement to notify the coroner (*r*). Not only must

(*p*) See Jervis on Coroners, Chapter X.

(*q*) Fitzherbert's Abridgment Coroners, 299; 3 Coke's Institutes, 53; 1 Hale's Pleas of the Crown, 448-604; 2 Hale's Pleas of the Crown, 73; 2 Hawkins's Pleas of the Crown c 12, Sects. 2 and 3; Umfreville's Lex Coronatoris, 215; 3 Henry VII, c. 1. But Bracton tells us this was only where the hue and cry was not levied. Bracton f 115b.

(*qq*) See Milbourn's Case, 7 Coke's Reports, 6b (1587); 3 Edward III, Coron, 299; 21 Edward III, coron., 238. In the former case Lowther J. actually did. amerce a town because a burglar was not forthcoming.

(*r*) Burns Justice (25th Edition), 786, 3 Edward III, coron., 339. "If the township leave a body unburied and send not for the coroner it shall be amerced either upon a presentment by the grand jury or by the coroner"; and see 2 Hale's Pleas of the Crown, 57, this is so whether the body be buried or suffered to putrify unless the township send for the coroner, Burn's Justice, *supra*. But Fitzherbert

the people notify the coroner, but they must assist him to hold the inquisition. It was the duty of every man in the town where the death occurred to be present at the inquest and tell all he knew (*s*) of the circumstances of the death (*ss*). The body must be left for the coroner and his jury to view. To bury the body without sending for the coroner was an indictable offence (*t*). But if the body had been buried when the coroner came he might dig it up (*u*), provided he came within a reasonable time after the body was buried (*v*), and fourteen days has been held a reasonable time (*w*). But if the body had lain buried long and (*ww*) had been suffered to putrefy (*x*) so that to disinter it would be useless (*xx*) or dangerous to the community (*y*) it should not be exhumed and the coroner should hold no

Coroners, 329-339-421; Hale's Summary, 171; Staundeford's Pleas of the Crown, 51; Lord Buchhurst's Case, 1 Keble, 278, "and it is the duty of all persons in whose houses such accidents happen to give immediate notice to the proper officer." King *v. Solgard*, Andrews, 231; S. C., 2; Strange, 1097 (1738), and see Itinerant Northampton Coron., 319; 2 Hale's Pleas of the Crown, 57, and Fleta, Book 1, c 25, Sect. 3.

(*s*) The word "man" is not used generically, from the nature of woman we may suppose they were not expected to tell all they knew or no inquest could have been completed until the female witnesses were dead.

(*ss*) Fleta Lib., I Cap. 24, Sect. 1.

(*t*) Queen *v. Clerk*, 1 Salkeld, 377, pl. 2 s. c.; Holt, 167, pl. 3 (1702), and per Holt, "it is matter indictable to bury a man that dies a violent death before the coroner's inquest have *sat upon him*. Anonymous, 7 Modern 10 (1702), and see 2 Hawkins's Pleas of the Crown, c 9, Sect. 23.

(*u*) Britton, c 1, Sect. 7; 2 Burn's Justice, 29 (Edition of 1845); Mirror, c. 1, Sect. 13; 2 Richard III, 2a; 21 Edward IV, 70-71; Queen *v. Clerk*, 1 Salkeld, 377 pl. 2, s. c.; Holt, 167 (1702); Rex *v. Stukeley*, Holt, 167 (1701); Brooke's Abridgment Coron., p. 121, 166, 167, 173; Staundeford's Pleas of the Crown, 51; 2 Hale's Pleas of the Crown, 58-59; Hale's Summary, 170; 2 Hawkins's, Pleas of the Crown, c. 9, 23; Jervis on Coroners, 5 and 6; but he should record the fact in order that the township may be amerced; Jervis, 5 and 6; Mirror, c. 1, Sect. 13; Britton, c. 1, Sect. 7.

(*v*) Queen *v. Clerk* (*supra*).

(*w*) 2 Richard III, 2a; Jenkins, 162 pl. 8; Carthew, 72; in Brooke's Abridgment Coroners, pl. 166 and 21 Edward IV, 70-71, it is said 40 days is a reasonable time, while seven months has been held too long a period; Rex *v. Bond*, 1 Strange, 22 (1717); Queen *v. Clerk* (*supra*); Rex *v. Solgard* (*supra*); 1 Hale's Pleas of the Crown, 414.

(*ww*) Rex *v. Bond*, 1 Strange 22, (1717); King *v. Parker*, 2 Levinz, 141, (1675).

(*x*) Staundeford's Pleas of the Crown, Book 2, cap. 52.

(*xx*) 2 Hawkins's Pleas of the Crown, c. 9, Sect. 23.

(*y*) Queen *v. Clerk*, 1 Salkeld, 377, pl. 2 (1702).

inquest he was without authority, unless he had a special commission (yy). Perhaps the better practice was to obtain leave of court before digging the body up (z). This was essential if the return was quashed (a) the body having been buried after inquisition held. The judges must exercise their discretion, however, in granting this commission (b). Of course if the body could not be found there could be no inquest as we shall see later (c). In that case, however, the community was not without relief. There were several methods by which the matter could be investigated; the justices of Oyer and Terminer might enquire (d) or the justices of the peace (e) the King's Bench might appoint a special commission to enquire (f) or the grand jury might inquire (g) but these are not *inquests* (h).

(yy) Hale's Summary, 170; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 23; Anonymous, 1 Ventris 352 (1680). But with a commission he may take it, Foxley's Case, 5 Coke's Reports, 110 (1601); 2 Rolle's Abridgment, 92; 2 Hale's Pleas of the Crown, 58 and if he holds the view that under these circumstances (putrefaction) without getting leave of court it is in the discretion of the King's Bench whether they will receive it or not, *Rex v. Causey*, B. R., 1717, Mss. reported in 2 Bacon's Abridgment, 429.

(z) Berkley's Case, 2 Siderfen, 90 (1658); *Queen v. Clerk*, 1 Salkeld, 377, pl. 2 (1702); Comyn's Digest, Title Officer, G. 11, if he take the inquisition so long after the death as to be of no use the court will refuse to receive or file it. *Rex v. Bond*, 1 Strange, 22 (1717); 2 Hawkins's Pleas of the Crown, c. 9, Sect. 24. Indeed, he may be amerced for taking up a body which had been buried so long as to be so decomposed that nothing could be gained, *Rex v. Parker*, 2 Levinz, 140 (1675).

(a) *Rex v. Saunders*, 1 Strange, 167; Anonymous, 1 Strange, 533 (1723). For not only could the coroner disinter a body to take an inquest, but to take a good one when the first was void for any reason; see 21 Edward IV, 70b; 2 Richard III, pl. 2-5; Staundeford's Pleas of the Crown, 51; Brooke's Abridgment Coroners, 167.

(b) *Queen v. Clerk*, 1 Salkeld, 377, pl. 2 (1702); *Rex v. Bond*, 1 Strange, 22 (1717); 2 Hawkins's Pleas of the Crown, c. 9, Sect. 23.

(c) Post, Sect. 45, note (d).

(d) Stanlack's Case, 1 Ventris, 182, s. c.; 1 Modern 82 (1671); 1 East's Pleas of the Crown, 379; 1 Hawkins's Pleas of the Crown, c. 27, Sects. 12 and 13 (1 Burroughs 17).

(e) 1 East Pleas of the Crown, 379; 1 Hawkins's Pleas of the Crown, c. 27, Sects. 12 and 13.

(f) Stanlack's Case, 1 Ventris, 182; 1 Modern, 82 (1671).

(g) Anonymous, 1 Ventris, 352 (1680).

(h) 2 Hawkins's Pleas of the Crown, c. 9, Sect. 23, and is therefore traversable.

Another branch of the coroners' power in this regard was that of holding inquests over those who die in prison (*i*). The coroner must hold inquisitions upon all who die in prison (*k*). This statement is to be taken literally. It was the duty of the coroner to take inquests on the bodies of every one who died in prison, not only on those on whom an inquest should otherwise be held (*m*), but also on those who died a natural death or by execution, (which seems at first blush a natural death for one to die in prison). The reasons given for this rule are various. Lord Hale says it is because if the gaoler "mistreats" his prisoner so that he dies it is murder (*n*), but that fails to explain why the coroner should take an inquest upon those who are executed. Hawkins says that it is because of the person who died in prison were suffered to putrefy or were buried without an inquest the gaoler or in his default the township would be amerced (*o*), but that is a truism. If the death happens in the King's Bench, the coroner thereof, who is clerk of the Crown is to view the body (*p*).

Sect. 35. It is a matter of doubt whether a coroner could take an inquisition other than for the death of a man (*q*). Hale tells us rather doubtfully that he can and states the cases to be these :

(*i*) *Ante*, Fleta, Book 1, c. 26, Sect. 3.

(*k*) Fleta, Book 1, c. 26, Sect. 3. Stephen's Digest of Criminal Procedure, Article, 210; 2 Hawkins's Pleas of the Crown, 47; Fitzherbert's Abridgment, 421; 3 Coke's Institutes, 52-91; Brooke's Abridgment Coroners, 168; 2 Hale's Pleas of the Crown, 57; 4 Blackstone's Commentaries, 274.

(*m*) "If a man be taken by process and after die in prison, the coroner ought to see him, which ought to be returned by the sheriff to the court." 6 Viner's Abridgment, 245, citing Brook's Abridgment, p. 1167.

(*n*) 2 Hale's Pleas of the Crown, 57, and he takes his authority from Fleta, Book 1, c. 26, Sect. 3.

(*o*) 2 Hawkins's Pleas of the Crown, c. 9, Sect. 23, citing Fitzherbert's Abridgment Coroners, 329, 339, 421; Staundeford's Pleas of the Crown, 51; Lord Burnhurst's Case, 1 Keble, 278. Perhaps it is from this remark that Burn has concluded that if the body of any is suffered to putrify, the gaoler is to be amerced, *supra*, note (*r*), Fleta, Book 1, c. 26, Sect. 3; Staundeford's Pleas of the Crown, c. 52.

(*p*) 2 Hale's Pleas of the Crown, 57-58; 3 Edward III, Coron., 292; 8 Edward II, Coron. 421.

(*q*) But every inquest of death which ends in a verdict of felony necessarily includes an inquest concerning the lands, goods and chat-

1. *de thesauro invento*; 2, of wreck and royal fish and 3, it seems he had power to attach persons who had dangerously wounded another (*r*). In this statement he implicitly relies on the statute of fourth Edward I. The more usual and better founded statement is that as the sheriff in his torn might inquire of all felonies except the death of a man so the coroner could only inquire of the death of man (*s*). The two propositions are not mutually exclusive for treasure trove, royal fish and wreck of the sea are not felonies. Coke tries to harmonize the two views by saying that the coroner shall inquire of no felony but death, but he shall inquire "of the escape of the murderer (*t*), of treasure trove, of deodands and of wreck of the sea" (*u*).

It must be remembered that the coroner's power to receive an appeal and to take an inquest are two entirely different things. The confusion over the power of the coroner to take inquests other than death may have arisen from a confusion of his power to receive appeals with his power to take inquests (*v*). According to Staundeford he had no power to take any indictment except for the death of a man (*w*). But while Hale and Staundeford speak doubtfully of his power to take inquests other than for the death of

tels forfeited thereby and every inquest of death necessarily includes an inquest concerning the deodand which may have accrued to the King and Lord of the franchise, 1 Blackstone's Commentaries, 348.

(*r*) 2 Pleas of the Crown, 66; see Fleta Lib. I, cap. 25, Sect. 15; in Sect. 14, Fleta says he may do the same in cases of rape.

(*s*) And that only *super visum corporis*, 27 Assize, 55; 35 Henry VI, 27-b; Fitzherbert's Abridgment Coroners, 206; Staundeford's Pleas of the Crown, 51; Brooke's Abridgment Appeals III, 2 Coke's Institutes 147, 4 Coke's Institutes, 271; 2 Hale's Pleas of the Crown, 88; Hale's Summary, 171; Umfreville's Lex Coronatoris XXVIII; 2 Hawkins's Pleas of the Crown, c 9, Sect. 34; Staundeford's Pleas of the Crown, c 52, says he can only inquire of the death of a man.

(*t*) The inquiry whether *fugam fecit* was a necessary part of the inquest of murder, Post, Sect. 58.

(*u*) 4 Coke's Institutes, 271.

(*v*) As to his power to receive appeals, see Post, Sect. 36.

(*w*) Staundeford's Pleas of the Crown, 51, relying on 35 Henry VI, fol. 27, Neaham J., and see 2 Coke's Institutes, 147; 4 Coke's Institutes, 271; 2 Hale's Pleas of the Crown, 65; Hale's Summary 171; 2 Bacon's Abridgment 430, "notwithstanding Magna Carta" says Coke, 2 Institutes, 32. But in Northumberland he inquires of many other felonies by special custom.

a man (x) and Coke denies it (y), Hawkins is strongly of the opinion that he has such a power, relying on the statute of fourth Edward I, and on Britton to prove he had it, and adding that it has never been taken away (yy).

The suggestion has been made that the coroner ought to inquire into arsons and fires.

This is so wide a power that perhaps it is wise to consider the basis upon which these conflicting views rest.

The view that the coroner has no such power rests upon two reported decisions and upon the opinions of several writers. In 27 Assize, 55 "a coroner entered his indictments in the King's Bench, that a certain man taken for felony was conducted to a church by certain friars and that they might be arrested and because the coroner has no right to receive an indictment unless on the body being present or by the command of a writ" (x) a writ was issued to the coroner to certify whether he had any other warrant or not.

There is a case in the year book (35 Henry VI, 33b, pl. 276) which is purely *obiter*. Needham, J. said: "For I say that coroners have power to inquire of no felony, except of the death of a man; again in Northumberland coroners have power to inquire of all felonies, etc., by custom."

Perhaps the annotater nearest in point of time to these decisions is Staundeford (a) who assures us in his Pleas of the Crown (b) that the coroner has no power to take inquests except for the death of a man. Brooke cites the case in 27 Assize with approbation in Le Graunde Abridg-

(x) Staundeford's Pleas of the Crown, 51; 2 Hale's Pleas of the Crown, 65; Hale's Summary, 171.

(y) 2 Institutes, 147; 4 Institutes, 271.

(yy) 2 Pleas of the Crown, c. 9, Sect. 35, citing Britton f3, and 4 Edward I, Sect. 2.

(z) See the very interesting article by Sherston Baker, 12 Law Magazine and Review, 248, wherein he tries to prove that the coroner has power to hold inquests in such cases. He sets aside the opinions of Coke, Hale and Comyns as founded upon improper information and of no weight and annotates the Statute of 4 Edward I extensively.

(a) A. D. 1583, Fleta wrote before these decisions.

(b) Page 51.

ment (*c*) Lord Coke in his Institutes twice (*d*) affirms the previous view relying solely on the two cases above referred to. Lord Hale follows suit in his Pleas of the Crown (*e*) and Summary (*f*). The learned Viner (*g*) and Chief Baron Comyns (*h*) are both of the same opinion.

To oppose this complete chain of legal classics, of the weight of whose links we will speak later, we have the opinions of Bracton, Fleta, Britton and the Mirror and the apocryphal statute of fourth Edward I. We find that all five authorities assert that the coroner may inquire of wounding (*i*). Bracton and the statute add house breaking (*k*). Fleta adds rape (*l*), Britton adds prison breach to this (*m*) while the Mirror (*mm*) though omitting to name the latter two felonies specifically states that the coroner may inquire of arson "and other felonies." Upon the strength of these early authorities and the weakness of the cases upon which the opposite doctrine rests, Hawkins bases a strong argument to the effect that the coroner may still inquire of rape and prison breach. The case in 27 Assize he tells us is really a question as to the coroners' power to inquire of accessories after the fact while the one in thirty-fifth Henry VI is purely *obiter* (*n*). Hale explains the case in thirty-fifth Henry VI by saying that in Northumberland the coroner has power to inquire of other felonies (*nn*)

(*c*) A. D. 1786, Title Indictment, pl. 29.

(*d*) 2 Institutes, 147; 4 Institutes, 271.

(*e*) Vol. 2, pp. 65-88.

(*f*) p. 171.

(*g*) 6 Abridgment, 245.

(*h*) Digest Title Officer, G. 9.

(*i*) 4 Edward I, Sect. 1, *supra*, Bracton f. 121b; Fleta Lib. 1 Cap. 25, Sect. 15; Britton, Chap. 1, Sects. 5-39; Mirror, Chapt. 1, Sect. 13. Britton even directs what is to be inquired in such a case, Chapt. 1, Sec. 39.

(*k*) Bracton, f. 121b; 4 Edward I, Sect. 1.

(*l*) Lib. 1, cap. 25, Sect. 14.

(*m*) Britton, c 1, Sects. 5-38, the latter section even directs what shall be inquired in an inquest of rape, *i. e.*, the force, the felony, presumptive signs such as effusion of blood, and clothes torn. Fleta also mentions rape and goes to considerable length as to the coroner's duties in this regard Lib. 1, cap. 25, Sect. 14, he tells us those guilty are to be attached without bail.

(*mm*) Chapter 1, Sect. 13.

and such it seems is the case (*o*). It seems possible that the statute of fourth Edward I may be right as to the powers of coroners and that these powers were lost by degrees in the realm generally while they were retained by special custom in Northumberland. Such an explanation would reconcile the position of Britton, Fleta, Bracton and the Mirror with that of Coke, Hale and Comyns. Coburn, C. J. in a recent case in England summarized the whole situation (*p*). He says "we have the authority of three of the greatest writers who have expounded and illustrated the law of England for saying that the office of coroner with reference to felonies is limited to cases of homicide on view of the body. Lord Coke and Lord Hale in clear and distinct terms lay down that as law and it is adopted by Comyns, C. B. in his last digest without the expression of any doubt on his part. These three authorities are sufficient in the absence of statutory enactments to the contrary to establish any proposition of law."

But whether or not the coroner had power to inquire of felonies other than death there are certain matters to which his jurisdiction beyond doubt extended. It is reasonably certain he had power to inquire of treasure trove (*q*). Comyns makes a doubt of this and says he has power to attach persons suspected of treasure trove (*r*). But the older authorities are undoubted. Of wreck of the sea, he might inquire (*s*) and of royal fish—sturgeons and whales,

(*n*) 2 Hawkins's Pleas of the Crown, c. 9, Sect. 35.

(*nn*) 2 Pleas of the Crown, 66.

(*o*) The statute of fourth Edward I certainly was construed in Northumberland and in certain other portions of England to give a wider jurisdiction than that usually conceded, 78 Law Times, 332. But the case of *Regina v. Herford*, 3 Ellis & Ellis, 115 s. c., 6 Jurist (N. S.) 750; 20 L. J. Q. B., 249, excluded this special jurisdiction.

(*p*) *Regina v. Herford* (*supra*).

(*q*) Bracton, f 121b, Staundeford's Pleas of the Crown, c 52; Fleta Liber, I, cap. 25, Sects. 1 and 11; 4 Edward I, Sect. 1, *supra*; Mirror, c 1, Sect. 13; Britton, c 1, Sects. 5-42, and this power has not become extinct; it was exercised as recently as *Regina v. Thomas, Leigh & Cave*, 313 (1863), and see Stephen's Digest of Criminal Procedure, Articles 20-228, for the modern English Practice and see 2 Hawkins's Pleas of the Crown, c 9, Sect. 36; 1 Blackstone's Commentaries, 349.

(*r*) Comyns Digest Title Officer, G. 9, and see 1 Blackstone's Commentaries, 349.

(*s*) And see that it is valued and delivered to the town and this by the statute of 4 Edward I, Sect. 1 (3 Edward I, Sect. 4), and

(*t*) but possibly his powers as to royal fish do not extend to holding an inquisition.

Sect. 36. "His third power" says Lord Hale, (*u*) is to take the accusations of an approver" (*v*). With due respect to so great an authority the proposition is not broad enough, the duty of the coroner in this respect is to receive appeals (*w*). His power to receive appeals of approvers was broader than that as to other appeals (*ww*), for while his authority to receive other appeals extended only to his own county, he could receive the appeals of an approver concerning a felony committed in any county (*x*). But even on this point all authorities do not agree (*y*). It is certain that as to appeals in general he may only take the appeal where the felony was committed in his county (*z*) and the reason given, viz.: that the felony may only be tried in the county where it was committed applies, if it applies at all, with equal force to appeals of approvers as to any other appeal (*a*). He could receive appeals for murder (*b*),

see Mirror, c. 1, Sect. 13; Comyns' Digest Title Officer, G. 10, to inquire whether wreck or not and certify the same and who is in possession of the goods, 1 Blackstone's Commentaries, 349.

(*t*) Britton, c. 1, Sect. 42, where it is said the finders both of royal fish and treasure are to be let to mainprize, but note there can be no concealment of treasure trove until it appear by the coroners inquest that there is treasure which has been trove; Umfreville note to Sect. 42, *supra*. See Staundeford's Pleas of the Crown, c. 52.

(*u*) 2 Pleas of the Crown, 67.

(*v*) Lord Hale thus defines an approver (see 2 P. C., 67).

(*w*) Bracton, ff 122, 147, Fleta, Book 1 c. 25; Britton f 5, Mirror, c. 1, Sect. 13; Staundeford's Pleas of the Crown, 64; 22 Assize, 97, 98; Finch, 321.

(*ww*) The case of an appeal by an approver differs from an appeal of a person grieved, 5 Henry V Coron., 437; 29 Edward III, 42 Coron., 462; Staundeford's Pleas of the Crown, 53.

(*x*) 29 Edward III, 42 Coron., 462; 2 Hale's Pleas of the Crown, 67; but the appeal of a felony or treason out of the county must be certified to the justices of goal delivery and they make process into any country in England to take the person appealed, 5 Henry V Coron., 437; 29 Edward III, 42; Coron, 462; Staundeford's Pleas of the Crown, 53.

(*y*) Some make no exceptions, Staundeford f. 52b, 53, 63a, 2 Hale's Pleas of the Crown, 67; Hale's Summary, 171-172; Fitzherbert's Abridgment, 437.

(*z*) Staundeford's Pleas of the Crown, 52b, 53-63; 2 Hale's Pleas of the Crown, 67-68; Summary, 172; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 43.

(*a*) Hawkins undertakes to explain this by saying "but he may receive the appeal of an approver or take the adjuration of one who acknowledges a felony done by him in any county for after such con-

larceny (*bb*), rape (*c*), robbery (*d*), *de plagis* (*e*) and mayhem (*f*). The appeal was received by the coroner and recorded in his roll, he then required pledges of the appellor to prosecute (*g*) and of the appellee for his appearance (*h*) or in more serious cases committed the appellee to the custody of the sheriff (*i*). But the appellee did not appear before the coroner the appeal was recorded in his absence, though whether the coroners could do more remains in doubt. Outlawry proceedings were then in order. Lord Hale tells us the coroner should issue a precept to the sheriff (*k*). Coke says he shall proceed no further than entry of the appeal and shall then deliver it to the justices (*l*). Hawkins tells us that he had power to proceed thereon to outlawry against an appellee (*m*). This opinion he evidently draws from Britton who goes at length into the powers of the coroner in outlawry upon appeals (*n*). One coroner could receive appeals (*o*), though the sheriff usually sat with the coroner

fession there need be no trial," 2 Hawkins's Pleas of the Crown, c. 9. Sect. 40, and see Staundeford's Pleas of the Crown, c 52.

(*b*) 4 Edward I, 3.

(*bb*) Britton, c 1, Sect. 43.

(*c*) Bracton, f 122; 4 Edward I, Sect. 3; Britton, c 1, Sect. 43.

(*d*) 4 Edward I, Sect. 3; Britton, c 1, Sect. 43; Staundeford's Pleas of the Crown, c 52.

(*e*) 4 Edward I, Sect. 3; Staundeford's Pleas of the Crown, c 52.

(*f*) 4 Edward I, Sect. 3, Staundeford's Pleas of the Crown, c 52.

(*g*) Britton, c 1, Sect. 16, and he must prosecute within a year and a day, *ibid.* The pledges are taken to the sheriff of the county in whose bailiwick the felony was committed.

(*h*) 4 Edward I, Sect. 3; Britton, c 1, Sect. 18, two pledges or in case of rape and some other felonies where they are aggravated, six.

(*i*) 4 Edward I, Sect. 3.

(*k*) 2 Hale's Pleas of the Crown, 67-68; but if he be a coroner of a franchise it must go to the sheriff, not to the bailiff of the franchise, for he can only execute process within the franchise, 29 Edward III, 42, Coron., 462; 2 Hale's Pleas of the Crown, 68.

(*l*) 2 Coke's Institutes, 32; Comyns Digest Title Officer, G. 5.

(*m*) 2 Pleas of the Crown, c 9, Sect. 43, yet it is certain he cannot award process against an appellee in a foreign county the justices of gaol delivery does that, Fitzherbert's Abridgment Coroner, 462. Staundeford's Pleas of the Crown, 53-73; Hale's Summary, 172; 29 Edward III, 42.

(*n*) Chapter 1, Sects. 18, 19, 20, 21, 22.

(*o*) 14 Henry IV, 34.

(*p*), they forming the coroner's court (*q*). Some authorities tell us that the coroner was the sole judge of this court (*r*).

Sect. 37. Outlawry goes back to the most primitive period of Teutonic history, to the laws of the tribesmen before they had come to be identified with specific territory (*s*). This might lead us to the conclusion that the coroner's office was a Saxon institution and not a Norman one (*t*), were it not for the fact that the earliest traces of the office of coroner show no signs of this feature of its power.

The pronouncement of the judgment of outlawry was long *per judicium coronatorum* (*u*). It being the duty of the coroner to be present at the county court to pronounce the judgment of outlawry upon the exigent after *quintus exactus* at the fifth county court if the defendant did not appear (*v*). At common law the coroner could try and outlaw but under Chapter 17 of Magna Carta he can neither try nor outlaw (*w*). He could still award an exigent, however, (*x*) and pronounce the judgment of outlawry (*xx*). Upon the inquisition of one coroner process lies to outlawry (*y*) but *quare* if the coroner could issue process of outlawry (*z*). Hale says "but now it is different (since Magna Carta) the coroner doth not proceed to outlawry but cer-

(*p*) 2 Hawkins's Pleas of the Crown, c 9, Sect. 39.

(*q*) See Post, Sect. 40.

(*r*) 2 Coke's Institutes, 176; 4 Henry VI, 16b, 2 Hawkins's Pleas of the Crown, c 9, Sect. 39, *contra*; 17 Assize, 5; Brooke's Abridgment Title Appeal, 56; Staundeford's Plea of the Crown, 52, 64; Hale's Summary, 171.

(*s*) Forsythe Trial by Jury 45.

(*t*) See *ante*, Chapter 1.

(*u*) Gilbert's Historical View of the Exchequer, 80; Britton, c 1, Sect. 4.

(*v*) Wood's Institutes, b 1, c 1; Jervis on Coroners, 50.

(*w*) 2 Hale's Pleas of the Crown, 66.

(*x*) 22 Assize, 97; Fitzherbert's Abridgment Title Coroners, 184; Mirror, c 1, Sect. 13; *contra* Brooke's Abridgment Title Appeal, 82; *Quere*, *Ibid* 108, accord Staundeford's Pleas of the Crown, 64; 2 Hale's Pleas of the Crown, 67; Hale's Summary, 171; 2 Hawkins's Pleas of the Crown, c 9, Sect. 41.

(*xx*) *Supra* note (*x*) but the Mayor of London does not though coroner pronounce sentences of outlawry, the Recorder does; City of London's Case, 8 Coke's Reports, 121b, 126a (1610).

(*y*) Frenche's Case, 2 Leonard, 200 (1584).

(*z*) 27 Assize, 47, where a man was indicted before the coroner and upon that was outlawed by the coroners.

tifies it to the next gaol delivery who are to proceed against the offenders if they are in the gaol and if not to certify it into the King's Bench who proceed to outlawry. The judgment of outlawry must be entered by two coroners (*a*).

Outlawry is a punishment inflicted on a person who is guilty of a contempt and contumacy by refusing to be amenable to and abide by the justice of that court which has lawful authority to call him before it. As this is a crime of the highest nature, being an act of rebellion against the state and community of which the offender is a member it subjects him to heavy forfeiture and disabilities (*b*) and therefore the consequences being so highly penal the greatest particularity is required in the proceeding and the slightest irregularity will be fatal (*c*).

The execution of the process of outlawry belongs especially to the office of sheriff (*d*).

If after the preliminary proceedings (*e*) have been regularly had the defendant does not appear nor is taken on or before the fifth county court or day of exaction under the writ of exigent, judgment of outlawry or if a woman of waiver is given by the coroners or one of them. For this purpose one of the coroners must be personally present at the county court (*f*). If he fail to attend he is liable to fine and imprisonment (*g*).

The calling upon the exigent may be by one coroner and

(*a*) Brooke's Abridgment Title Process, pl. 172; 14 Henry IV, p. 34, but where there is only one in the county he can act alone, Jenkins, 85, pl. 65, one is sufficient to enter the judgment (for which see Bracton Return de Briefs, pl. 42 and 14 Henry IV, 34), but all should make the entry *Ibid*. And the judgment of two is good enough though there are four in the county but all should join in the entry, 4 Edward IV, 43; and if there are two coroners in the county the judgment of outlawry must be given by both. Hobart, 70; 1 Hale's Pleas of the Crown, 417. But Bacon raises a *quere* whether the act of one coroner is not sufficient even where more than one should act, 2 Abridgment, 433.

(*b*) Coke upon Littleton, 128; 2 Rolle's Abridgment, 802; Doctor and Student Dialogue, 2, Chap. 8.

(*c*) Jervis on Coroners, 51.

(*d*) Watson's Sheriff, Chapter, 8.

(*e*) For a careful and concise statement of just how these proceedings are taken, see Britton, c 1, Sects. 18, 19, 20, 21 and 22.

(*f*) Britton, c 14, Sect. 2.

(*g*) Jervis on Coroners, 51; Anonymous, Noy, 113 (1605); see, however, Rastell's Entries, 586.

the judgment may be pronounced by one, but the entry and return must be in the name of all (*h*). It has been said that the names of the coroners must be subscribed to the judgment of outlawry (*i*), but they need not so appear upon the record of the outlawry (*k*) if their names are stated (*l*), for it will suffice if by the record the judgement appear to have been pronounced by the coroners. In order that the judgment may appear from the record to have been pronounced by the coroners, their name of office must be stated upon the record (*m*) and if it be not, the judgment will be erroneous, except in London where the judgment is given by the recorder in which case the mayor who is coroner need not be named (*n*).

Having pronounced the judgment the coroners are *functi officio*, the exigent with the proceedings thereon and the judgment of outlawry being returned by the sheriff (*o*).

. It would appear from some authorities (*p*) that a coroner upon an inquisition found before him might award process of outlawry; but this is doubted by Lord Hale (*q*) and we find no instance in comparatively modern times of such a course having been adopted by a coroner. If the offender be taken he is committed to jail pursuant to the statute *de officio conoratoris*, but if he be not found the coroner returns his inquisition to the next gaol delivery, when, if the offender having in the meantime been taken be in goal the justices of gaol delivery proceed against him, but if he

(*h*) Lambe *v.* Wiseman, Hobart, 70, but after they pronounce the judgment, they may stay the return, 1 Hale's Pleas of the Crown, 417; 2 *Id.* 85, and see Staundeford's Pleas of the Crown, Book 2, cap. 52, at least two coroners must join in the entry.

(*i*) 2 Hale's Pleas of the Crown, 204; 2 Rolle's Abridgment, 802.

(*k*) King *v.* Yaudel, 4 Term Reports, 542 (1792).

(*l*) Patrick's Case, Croke's James, 528 (1620); King *v.* Yaudel, 4 Term Reports, 542 (1792).

(*m*) Bacon's Abridgment Title Outlawry, E. 4.

(*n*) Coke upon Littleton, 288; Brooke's Abridgment Title Uttlagarius, 31; Puttenham's Case, Dyer, 317a (1572), City of London's Case, 8 Coke's Reports, 121b, 126 (1610); 2 Henry VII, 33; Jervis on Coroners, 51.

(*o*) King *v.* Yaudel, 4 Term Reports, 529-530 (1792); Jervis on Coroners, 52.

(*p*) 27 Assize, 47; Brooke's Abridgment Title Uttlagarius, 38; Jervis on Coroners, 52.

(*q*) 2 Hale's Pleas of the Crown, 199; Jervis on Coroners, 52.

be not in custody the inquisition is certified to the Court of King' Bench from whence process of outlawry is awarded against him (*r*).

If the coroner refuses to pronounce judgment of outlawry upon the exigent he may be attached (*s*), or may be fined or imprisoned unless he can satisfactorily account for his absence if his non-appearance be returned by the sheriff (*t*).

It has been said that much credit is given to the coroner's record of the judgment in outlawry; that if the sheriff return a *quintus exactus* only upon the exigent and the coroners upon a *certiorari* directed to them certify that the defendant has been outlawed, the return of the sheriff shall be amended by the certificate upon which the consequences of outlawry shall attach (*u*), but the contrary seems to have been holden by one authority (*v*) and in another the extent of this proposition is made the subject of doubt (*w*).

Sect. 38. The coroner's fourth power according to Lord Hale (*x*) is to take the confessions of a felon (*y*) of a felony committed in a foreign country (*z*) and take his abjuration. The common law on this point also is interesting. "It is to be observed that at common law if a person accused of any felony (except sacrilege) whether in the same or any other county for which he was liable to judgment of death and not charged with treason had fled to any churchyard and within forty days confessed himself guilty before the coroner and declared all the particular circumstances of the offence, and thereupon taken the oath in that case provided (the substance whereof was that he abjured

(*r*) 2 Hale's Pleas of the Crown, 64; Jervis on Coroners, 52.

(*s*) Anonymous, Noy, 113 (1605).

(*t*) Rastell's Entries, 586.

(*u*) 2 Hale's Pleas of the Crown, 203; Plume's Case, Latch, 210; s. c., Palmer, 480 (1628); 2 Hawkins's Pleas of the Crown, c. 48, Sect. 27; Jervis on Coroners, 53.

(*v*) Proctor's Case, Dyer, 223 (1563); Jervis on Coroners, 53.

(*w*) 38 Edward III, 14; Jervis on Coroners, 53.

(*x*) 2 Pleas of the Crown, 68.

(*y*) Mirror, c 1, Sect. 13; Britton, c 1, Sects. 5, 36.

(*z*) Hale again errs on the side of caution, the coroner can take confessions of felonies committed not only in England, but even in his own county, Britton, c 1, Sects. 5, 36; (the word evidently means county), Staundeford's Pleas of the Crown, c 52.

the realm and would depart as soon as possible at the port which should be assigned him (*a*) and never return without leave of the king, etc.) saved his life if he observed the terms of the oath by going with all convenient speed the nearest way to the port assigned etc. (*a*), but he was attainted of felony by such abjuration without more and consequently forfeited his lands, goods, etc." (*b*).

We learn in Britton (*c*) that coroners took the confession and abjuration in the presence of the sheriff (*d*) and the four next vills before whom the felon should publicly confess and abjure the realm (*e*) but if the felon were unwilling to abjure the realm, the coroner turned him over to the town to keep at their peril (*f*). But by the statute of 21 James I, chapter 25 "no sanctuary or privilege of sanctuary shall be allowed in any case" (*g*).

It is said he may take the confession of him that breaks prison and on his record the party shall be hanged (*h*). The coroner's record of an abjuration or of the confession of breaking prison or of felony by an approver estop the party not only from traversing the confession, but also from alleging that it was taken from him by duress, etc. So if he plead he is not the same person the coroners finding binds him, but the judge may inform his conscience by an inquiry from the people living next the place (*i*).

(*a*) Before Edward I's time, the felon might elect his port, after the latter part of that reign the coroner assigned the port, 12 Edward I; 1 Statutes of the Realm, 59, and see Coroners Rolls, Selden Society, p. 9, where the felon elected in 1267 and in 1276 it was assigned to him, *Ibid*, p. 37, again a port was assigned in 1278, *Ibid*, p. 38.

(*b*) 2 Bacon's Abridgment, 433; see 2 Hawkins's Pleas of the Crown, c 9, Sect. 44.

(*c*) Chapter 1, Sect. 36.

(*d*) "For it is our will that he (the coroner) be their (the sheriffs) controller in every branch of their office."

(*e*) Chapter 1, Sect. 37.

(*f*) No one but the coroner could grant abjuration, Umfreville's Lex Coronatoris LVII. It was the coroner who assigned the port though some say it was the sheriff. By the Statute of 22 Henry VIII, c 7, the felon was permitted to abjure only the liberties of the realm that is he was to remain in sanctuary all the rest of his life, *Ibid*.

(*g*) 4 Statutes of the Realm, 1233 (1623), Coke's Pleas of the Crown, Cap. 51.

(*h*) 2 Hale's Pleas of the Crown, 66; 8 Edward II, Coron., 435, is this what Comyns refers to when he says the coroner may inquire of prison breach? Staundeford's Pleas of the Crown, c. 52, citing Shard, J.

(*i*) Staundeford's Pleas of the Crown, c 52, and 2 Hawkins's Pleas of the Crown, c 9, Sect. 53, and cases there cited.

But the law as to all these matters of abjuration and confession of approvers is obsolete (*k*) and has long been so.

Sect. 39. The obligation upon the coroner to act was no less imperative than that of the ville to notify him of the occasion thereto (*kk*). At common law he was amerced for neglect (*l*). By the statute of 3 Henry VII, Chapter I (*m*) he must execute his office upon pain of £5 (*n*). This was reduced to 40s. by the statute of 1 Henry VIII, c7 (*o*), but again changed by 1 & 2 Phillip and Mary c3, so as to be at the discretion of the court (*p*). In Lord Buchhurst's case the coroner was removed and fined £100 for keeping an inquisition in his pocket "for a favor to a felon" (*q*). If he imposed an improper (*r*) inquisition upon the jury he could be committed (*s*). If he returned the wrong presentment an information would be granted against him (*t*). So too, if

(*k*) 2 Hawkins's Pleas of the Crown, c 9, Sect. 44.

(*kk*) If one be killed in a ville and the coroner makes no enquest (*sic*) the ville must be amerced, by Twisden for probably the coroner had no notice of it. Stiles, 238 pl. 546, and see Staundeford's Pleas of the Crown, 51.

(*l*) Staundeford's Pleas of the Crown, 51, by 3 Edward I "Coroners concealing felonies or not doing their duty through favor to misdoers shall be imprisoned a year and fined at the pleasure of the King."

(*m*) 2 Statutes of the Realm, 511 (1487).

(*n*) Some 100 s, it is all the same, Staundeford's Pleas of the Crown, 51; Queen *v.* Clerk, 1 Salkeld, 377. (1702); Rex *v.* Wakefield, 1 Strange, 69; Fitzherbert's Abridgment Title Coroners, 292; 1 Hale's Pleas of the Crown, 424; 2 Hale's Pleas of the Crown, 58; Hale's Summary, 170.

(*o*) 3 Statutes of the Realm, 4 (1509), but the scope of the enactment was increased to include the taking of a fee for an inquest upon the body of a person dead by misadventure, and see Staundeford's Pleas of the Crown, 51; Queen *v.* Clerk, *supra*, Hale's Summary, 170.

(*p*) 4 Statutes of the Realm, 240 (1554), by 25 George, II, he is removed from office. It is strange also to notice that by 1 Henry VII, c. 7, the fine is also imposed "if he do not endeavor."

(*q*) 1 Keble, 280 (1662), for if there were an inquest it must be returned by the *certiorari per curiam*, Stiles, 238 pl. 546.

(*r*) What is an improper inquest? See Post discussion of the Lewis murder case, Sect. 77.

(*s*) Rex *v.* Wakefield, 1 Strange, 69; in Rex *v.* Scorey, 1 Leach, 43, the jury were instructed to find murder but found accidental death, the coroner committed the man for murder and the court of King's Bench granted a rule *nisi* for an information against the coroner.

(*t*) Comerback, 385.

he failed to appear when called upon in case of sudden death and the grand inquest (*u*) found that it was death by misadventure, but the coroner's inquest found otherwise (*v*). He was to return his inquest in due time according to law, or he would be fined for neglect (*w*).

Of all these neglects the justices of the peace or of assize inquired. They reported the defaults and extortions of the coroner (*x*).

But even these penalties; as the fact that there are decided cases on the subject proves, were not sufficient to act as deterrents. What then could be done in the case of the coroner's neglect? The justices of Oyer and Terminer or of the peace or a justice of the gaol delivery might inquire (*y*). But their presentment was traversable (*z*). So the King's Bench might itself inquire or appoint a commission to inquire, or the grand jury might inquire, but these so-called inquests were not *super visum corporis* and could be transversed (*zz*).

Fleta gives a very full account of the method by which the king investigated the doings of his coroners. Although the method here set out long since became obsolete the account is of great interest. It is as follows (*a*):

"Moreover how fraud on the part of coroners can be overcome is shown by the statute of Oxford (*aa*) which is like this. It is provided that examiners who are to be

(*u*) Meaning the Grand Jury.

(*v*) He is to be fined and imprisoned, 3 Edward III, Coron., 292; 2 Hale's Pleas of the Crown, 58.

(*w*) £5 by 3 Henry VII, cap. 1; 2 Statutes of the Realm, 511; see 2 Hale's Pleas of the Crown, 58; but see King *v.* Lord Buchhurst (*supra*).

(*x*) By 1 Henry VIII, cap. 7; 3 Statutes of the Realm, 4 (1509); see 6 Viner's Abridgment, 256.

(*y*) But it was not properly speaking an inquisition, and they must inquire openly if they inquire secretly their inquest shall be quashed, 1 Burns' Justices, 172; 2 Hawkins's Pleas of the Crown, c. 9, Sect. 29.

(*z*) Coke's Pleas of the Crown, cap. 8, p. 55b; 1 Hale's Pleas of the Crown, cap. 37, p. 414, and see Langton Case, 37 Eliz. B. R., Mss. mentioned in 1 Hale's Pleas of the Crown, 414, and Greeves Case, 1656, *Ibid.*, and see 2 Hale's Pleas of the Crown, 59.

(*zz*) Stanlack's Case, 1 Ventris, 182 s. c.; 1 Modern, 82 (1671).

(*a*) Book 1, Chapter 18.

(*aa*) Whether there was such a statute is a question.

appointed to make written records at their own warrants shall give notice to the sheriff of the place whither they shall have been summoned; (2) that they shall cause to come into their presence, at a certain day and place expressed in their mandate, A coroner of B, the men and those of the hundreds, the servants and beadles who are now residing in the bailiwick of the coroner himself or shall have been at the time when the said A was first made coroner of the king, whether within the liberty or beyond it (*sive infra libertatem vel extra*), and all the clerks with all their rolls and records for the whole time for which A shall have been coroner of the king.

Furthermore, when the examiners themselves shall shall have come they shall both cause the aforesaid rolls to be sealed, and shall return them, the coroner having acknowledged these said seals, unbroken (to) until the arrival of the itinerant justice to be preserved in safety unless it shall have been otherwise ordered by a warrant "*Regii mandati*" in the meantime; and what is said concerning the coroner shall be known by his successor that same who shall be charged from the time of his predecessor the coroner. And this shall be done that the same coroner or his successors or the clerk may not be able to manufacture anything in the court of the aforesaid circuit in the case of these rolls.

And afterwards the officers, servants of the bailiwick and the beadles aforesaid shall swear that they will perform well and faithfully those things which the aforesaid examiners shall enjoin upon them on the part of the king and that they will keep secrecy. And when these officers, etc., have sworn each bailiff of a hundred and of a liberty shall be charged separately, (*per se*), upon whom is shall be enjoined (1) to have in the presence of the examiners at a certain day and place all names of the towns and hamlets existing in their bailiwick, the aforesaid examiners being made known and the information furnished being distinctly rendered (*liberatura*); (2) and to cause to come into the examiner's presence at that time from each (any) town eight men, from a lesser town six men and from any

hamlet, four of the better sort and more acquainted with the law, excepting the lords of such towns and hamlets, through whom the examiners themselves shall receive and take the principal inquiry from twelve prime jurors (b) from any hundred, liberty and town replying through twelve, who live under the jurisdiction of the aforesaid coroner, and (3) (to see) that each of the aforesaid eight, six and four have his own proper seal and if a lack be found in the aforesaid towns, lesser towns and hamlets, preventing the possibility of making the inquiry from free men as satisfactory, then (4) to add to the same from the more discreet and law-experienced villeins having seals. Furthermore, when the examiners shall have come at the said day and place and the foregoing has been done, then they shall themselves chose an examiner assigning "*per Dominum Regem*" from the aforesaid eight, six and four men, two of the better sort and more trained in the law, at their discretion; who shall thus take oath, viz.: "You hear" (C and D, examiners assigned "*per Dominum Regem*") "that I shall speak the truth and that I shall conceal no truth nor so far as in me lies shall I permit it to be concealed or suppressed in your presence on occasion of any promise, gift, favor, hate, love or affinity nor through any one's abettance or procuring or in any way shall I omit to speak truth or make presentation to you upon those matters which you will enjoin or charge upon me, so help me God, and these relics, etc., especially upon those matters which I know or shall have been able to inquire." This same oath the townsmen and those of the hamlets shall then take individually, and by the same oath the twelve shall be charged afterwards, but the inquisitors themselves hand it over; and they will deliberate after the swearing in of each man of the towns (c), lesser towns and hamlets of the hundreds wapentakes and liberties in the jurisdiction aforesaid existing and likewise without, but it may be necessary that a capitulary be taken so that thereby they may render themselves

(b) Prime jurors seems to refer to the first men sworn.

(c) It appears from the text that the eight, six and four men form a sort of assistant examining board to the twelve, a local jury.

more certain on the part of the king by firmly enjoining upon freeman under penalty of *exhaeredatio* and on villeins under penalty of life imprisonment that they shall not conceal any part of the truth but fully just as herein it shall have been found they shall make presentation, which presentation shall be duplicated in handwriting which duplicates with their seals appended shall be delivered to the said examiners and of these duplicates one shall remain within the keeping of these examiners and the other be delivered to the twelve jurors so that concerning the articles contained in the same they may be more fully informed when they shall have been convened for this purpose.

In the first place they shall make faithful presentation (1) of all murders, homicides and felonies, by whom, when, and where on earth, that is, whether on water, in wood, or plain, in marsh, whether in the town or out, or wheresoever and howsoever perpetrated during the whole time for which such A was coroner of the king in those regions; (2), whether the coroner himself in person shall have gone to the same in performing his office, or, if by chance he shall have substituted another in his place, (3) how often, and who the substitute was.

Likewise (4) if the coroner himself, *gratis* and without delay, shall have gone to recover treasure, how often he may have been required for this purpose, or, if he sought anything or his clerk received anything to do quickly that office of his which he was bound to do without compensation, or if he sought delay so that by such means he might extort money, in that case how often and how much, and at whose hands he may have received such money.

Likewise (5) if the chattels of felons shall have been legally appraised as well by his own friends as others and delivered to a townsman to be guarded or shall have been indicted in the coroner's roll without regard.

Likewise (6) concerning any gifts given to the coroner for this, viz.: because he took false and hired (inquest) testimony, for suppressing the trial of any one, appraising the chattels of any one at less than the true value, or if, making an inquest in his court concerning property and

enrollments he shall have caused enrollments to be made otherwise than in the prescribed form, or if he falsify his rolls, then in what case and in whose behalf it was attributable to him and to his clerk therefor.

Likewise if he shall have caused any appeals to be enrolled falsely or suffered them to be suppressed (*murdri*) or stricken from his rolls or (*supersident*) omitted or refused to admit or enroll them etc., by force of poverty or ill will for the plaintiff or by favor on occasion of a gift or a promise or on account of fear or affinity for any defendant, and (in case such were done) at whose hands.

Likewise if he shall have received anything from the townsmen among whom he caused to be made his oaths, appearance and inquests; in that case how often and how much and at whose hands.

Likewise if any of his men at his appearances and inquests shall have taken anything from the bodies of the dead persons and carried it off, in that case how much and how often and who did this. Likewise if he caused all attachments to be made in the accredited manner or not.

Likewise if he caused any one to be attached unjustly so that he injured him and thus extorted from him in place of the (guilty) or chargeable party who may have had the same name, in that case at whose instigation and abettment and how much he received from such injured party or the manifest procurer of it.

Likewise if he did his office in all cases without delay and willingly taking nothing from any one, according to the tenor of the statute.

Likewise, if in any case he shall have made any concealment concerning articles of appeal or caused or procured their concealment to the detriment of the appellant, the defendant or another on the occasion of gift, fear, affinity, promise, love or any one's procuring in that case how and by whom, for what return, on what occasion, how often and in what cases.

Likewise whether or not (*necne*) he shall have faithfully caused the arrest of bondsmen, runaway from the people among whom they were sojourning and withdrawn

for suspicion of wrong held concerning them, and shall have caused the same to be enrolled afresh after a thorough investigation and delivered to the townsmen in whose keeping they have been placed (found) to be kept safely until the arrival of the circuit (itinerant) justice; and if he shall not have done this in whole or in part, in that case who delivered these things (*made free of them*) and to what extent.

Likewise, if he shall not have subtracted any appeal or complaint, or caused it to be subtracted and made naught in that case by whose procuring and for how much he shall have done this and how often.

Likewise, concerning treasure found at any time in his bailiwick, who found it and how much and to whose hands it came eventually.

The examiners are required to go to make clearly the aforesaid investigation from wapentake to wapentake, and from hundred to hundred as well under the liberty as beyond, and from town to town, replying (which town replies) through twelve men. And the presentations of the jurors being thus taken, with all their seals, (the examiners) shall cause to come into their presence, at once, twelve men of the better, richer and more discreet sort and shall charge them with hands upon the Bible (*tactis sacra-sanctis*) faithfully to present the truth concerning the aforesaid capitaries.

And if the examiners shall have suspected any concealment, it shall be permitted then through twenty-four jurors chosen from the whole body of the county and charged according to the aforesaid capitularies, to commit all or any concealing the truth in the forgoing matters.

Furthermore, if any coroner, clerk, juror or bailiff shall happen to be convicted in their court in the aforesaid cases, such shall be delivered to the sheriff who shall guard them until they shall have been formally delivered through sufficient mancipators, after satisfaction made to the king, of fraud, perjury and falsifying when the king may be willing to pronounce thereupon, and upon such the king shall be permitted at will to affix a heavy penalty not expressed. Given at Oxford, etc.

Sect. 40. The office of coroner seems in ancient times to have been more elevated than today. They acted with the sheriff in the county court, holding a counter roll (*c*) and so acting as a check on the sheriff (*d*), for the coroner's roll was of more authority than his. They kept a record of all fines and amercements in the sheriff's court (*e*). Fleta even goes so far as to call the county court, the court of the sheriff and the coroner (*f*) while Britton says (*g*) that in counties there is a twofold court, one of the pleas of the king's peace which is held by the coroners and suitors and of which the coroners only have record, the other (for civil actions) in which the suitors are judges and have no record out of their court except by consent of the parties. The rolls exhibited by the Selden Society use the words Crown Pleas and Pleas of the Coroner interchangeably (*i*).

On the criminal side of this court the sheriff held a counter roll (*k*) though he did not act judicially and an appeal commenced before the coroner alone was deemed sufficient (*l*), for the coroner could receive an appeal without the concurrence of any other officer (*m*). A *certiorari* to the coroner alone was sufficient (*n*) for the coroner was the judge, but the *certiorari* was more usually to the coroner and the sheriff by the statute of Westminster I, chapter 10. But never to the sheriff alone, neither for appeals nor for outlawries, unless in London (*o*). Some say that the

(*c*) Staundeford's Pleas of the Crown, Book 2, cap. 51.

(*d*) Gilbert's Historical View of the Exchequer, 80; see Article by Charles Gross, 7 Political Science Quarterly, 656.

(*e*) Gilbert's Historical View of the Exchequer, 80.

(*f*) fol. 40.

(*g*) Book 1, Sect. 135.

(*i*) And see Select Coroners Rolls, pp. 34-36, and Gross's Introduction, p XXV.

(*k*) 34 Edward III, 146; Register, 284a; Fleta, Book 1, cap. 18, Sect. 1; Proctor's Case, Dyer, 223b (1563), by 3 Henry VII.

(*l*) 4 Henry VI, 16; *contra*, Brooke's Abridgment Title Appeals 44, and see 2 Hawkins's Pleas of the Crown, c. 9, Sect. 39.

(*m*) 2 Hale's Pleas of the Crown, 67; 2 Hawkins's Pleas of the Crown, c 9, Sect. 39; Hale's Summary, 172.

(*n*) 4 Henry VI, 16a, Proctor's Case, Dyer, 222b (1563).

(*o*) Puttenham's Case, Dyer, 317a; 2 Hale's Pleas of the Crown, 67.

certiorari must be directed to both the sheriff and the coroner (*p*), but others say the coroner is sole judge of the court (*q*). Remnants of these earlier powers of the coroner lingered many centuries. He could administer oaths (*k*), which he commonly did to the jury and to witnesses. He had the power to commit (*l*). Indeed he might be said to have been a committing magistrate (*m*). He probably had power to exclude from his presence those whom he deemed it proper (*n*) to exclude, without doubt might bind any person to the peace who made an affray in his presence (*o*) and was vested with power to forcibly remove those who obstructed him in the performance of his duties (*p*). It was said to be a misdemeanor to obstruct the coroner or his jury in the view or inquiry (*q*). His proceedings were considered judicial in their nature (*r*) and could not be performed by deputy (*s*), even coroners *virtute cartae sive commissionis* could not delegate their authority (*t*), except the coroner of the admiralty (*u*). They must even style themselves "coroner" in their return or their inquisitions were void (*v*). So where one

(*p*) 14 Henry IV, 15b, 16; Brooke's Abridgment Title Appeals, 44; 2 Coke's Institutes, 176; Staundeford's Pleas of the Crown, 64; 2 Hale's Pleas of the Crown, 67-70; 2 Hawkins's Pleas of the Crown, c 9, Sect. 42.

(*q*) 2 Coke's Institutes, 176; 4 Henry VI, 16; Brooke's Abridgment Title Appeals, 44; 2 Hawkins's Pleas of the Crown, c 9, Sect. 39, but see *contra*, 17 Assize, 5; Brooke's Abridgment Title Appeals, 56; Hale's Summary, 172; Staundeford's Pleas of the Crown, 52-64.

(*k*) Mirror, c 1, Sect. 13.

(*l*) See Post, Sect. 42 for a fuller discussion of this topic.

(*m*) Jervis on Coroners, 31; Mirror, c 1, Sect. 13; Britton, f 8; Lamb Eiren, 378.

(*n*) See Post, Sect. 54 for a fuller discussion of this subject.

(*o*) 2 Bacon's Abridgment, 424, note c.

(*p*) Jervis on Coroners, 271.

(*q*) Umfreville citing Calth. M. S., and see Jervis on Coroners, 270; an injunction was secured from the privy council commanding the coroner not to take his inquiry without the assistance of a justice of the peace whereupon the coroner ended his inquiry and upon a motion for prohibition it was held the injunction was against the law.

(*r*) See Post, Sect. 54.

(*s*) See Post, Sect. 41.

(*t*) See *ante*, Sect. 20.

(*u*) *Ante*, Sect. 19.

(*v*) *Ante*, Sect. 23.

who sat was not a coroner, the whole proceeding was quashed upon a writ of error (*w*). The sheriff and bailiffs must attend him if he so demanded (*x*). In other words the court of the coroner was still a court of record (*y*).

Sect. 41. The coroner's office being a judicial one, it follows as a matter of course that such duties as are in their nature judicial must be exercised by the coroner and not by another (*z*) as Britton says (*a*), coroners are prohibited from making substitutes (*b*), and if anything be done by such a substitute, it is void (*bb*). But the coroner of the admiralty forms an exception to this otherwise general rule (*c*).

In Dearing's case (*d*) Lord Berkley's coroner failed to state in his return how Lord Berkley came to make him coroner, and therefore the return was quashed. This is an additional reason why none but the coroner can hold the inquest or even view the body (*e*), Jervis puts the reason for the rule very clearly, saying (*f*): "But without reference to authority it is clear from principle that the power of the coroner could not at common law be deputed, being an office of trust, one which concerns the public administration of justice and the revenue of the crown, into which the coroner is elected from his presumed quali-

(*w*) The Coroners Case, Jenkins, 90 pl., 74.

(*x*) Britton, c 1, Sect. 43.

(*y*) 4 Coke's Institutes, 271; 2 Hale's Pleas of the Crown, 53; 4 Blackstone's Commentaries, 274; Comyns Digest Title Officer, G. 5.

(*z*) A coroner may appoint a deputy without deed, Clecott v. Dennys, Croke's Elizabeth, 67 (1588), but the deputy may not hold inquests. Staundeford's Pleas of the Crown, 51.

(*a*) C 1, Sect. 3.

(*b*) Except the Lord Steward and Justices of Ireland and Chester.

(*bb*) "Be it even an abjuration or of outlawry."

(*c*) 2 Burn's Justices, 29 (Edition of 1845).

(*d*) Croke's Elizabeth, 193, pl., 7, and see Penners Case, *Ibid*, 31, pl., 4.

(*e*) By the Statute of Exeter (14 Edward I) see Fitzherbert's Abridgment Title Justices, 166; Jervis on Coroners, 5-6 and 71; Crompton's Justices, f 227a, 2 Hale's Pleas of the Crown, 58. But note also that Professor Gross says the Statute of Exeter is without date (Introduction to Select Coroners Rolls, XXV, it would seem it is in force in Pennsylvania, therefore), and is of doubtful authority.

(*f*) Coroners, 72.

fications to discharge the important duties belonging to it. These qualifications are personal and could not be delegated."

Sect. 42. Another power of the coroner which is incident to his authority as a court of record, was the power to commit. While this was undoubtedly within the power of the coroner, the extent of this authority was very ill defined and uncertain. He undoubtedly had the power to commit those who made an affray in his presence (*g*). He probably also might commit any person who offered obstruction to the due administration of justice (*h*). But his powers beyond these were very doubtful. Jervis says (*hh*), he "may cause felons to be apprehended, also burglars and robbers as to whom no inquisition can be taken. Some authorities say he had the power to commit those found guilty (*i*); while others seem to be of opinion that he only had authority to record in order that others might punish (*k*). Undoubtedly he could compel the first finders of a dead body to produce pledges (*l*), unless the deceased had had the rites of the church (*m*). Where deliberate murder was committed, the neighbors were required to find pledges (*n*). In Henry II's time the coroner could not allow a person accused, either as principal or accessory, to remain out of jail (*o*). In Granville's time, there was a special writ obtainable as a matter of royal favor to inquire whether the party was justly accused. It was known as the writ *de odio et atya* and directed the coroner to

(*g*) Crom. 6, Lamb b. 1, c. 3; 2 Hawkins's Pleas of the Crown, c. 8, Sect. 5; 2 Bacon's Abridgment, 424, note c.

(*h*) Jervis on Coroners, 271.

(*hh*) Coroners, p. 31; see Mirror, c 1, Sect. 13; Britton, f 8; Lamb Eiren, 378.

(*i*) 1 Blackstone's Commentaries, 348; see 4 Edward I, Sect. 1; Britton, c 1, Sect. 43.

(*k*) Mirror, c 1, Sect. 13; 2 Hale's Pleas of the Crown, 64.

(*l*) Coroners Rolls, Selden Society, pp. 1-2-3-4-5, etc., Bracton, f. 121b; 1 Statutes of the Realm, 40; Britton, c. 1 Sect. 24; 4 Edward I, Sect. 1.

(*m*) 30 and 31 Edward I, 522; Bracton, fol. 135.

(*n*) Coroners Rolls, Selden Society, 14-15-24, etc.

(*o*) Sir Travis Twiss's Introduction to Bracton.

inquire if the inquest had not so found from spite or hatred (*p*).

If any were present at the death and not guilty, they were to be bound over to the next gaol delivery and their names recorded on the roll, the idea being that if evidence were found against them they might be proceeded against and if not they might be used as witnesses (*q*). The coroner had power to take a manslayer before he took the inquest, for the inquest sometimes was long and the guilty might escape (*r*). In ancient times, if the parties found guilty by the inquest were not found they were to be proceeded against to outlawry (*s*). But Hale says "but now it is different, the coroner doth not proceed to out-seems clear that the security taken by him for keeping the lawry, but certifies it to the next gaol delivery who are to proceed against the offenders if they are in gaol, if not to certify it to the B. R. who proceed to outlawry " (*t*). Hawkins takes a very narrow view of the power of the coroner in this direction. He says, "but it seems the better opinion that he hath no authority to grant process and it seems clear that the security taken by him for keeping the peace (except only when it is taken by him as a judge of his own court for an affray done in such court) is not to be looked upon as a recognizance, but as an obligation, because it is not taken by one who acts as a judge of record or by the king's commission as all recognizances ought to be" (*u*).

Sect. 43. We have already seen (*v*) that the office of coroner was a highly honorable one. It was an office where the duties were paid for only by the glory (*w*). The statute of fourth Edward I provides "that no coroner demand or take anything to do his office upon pain of great for-

(*p*) Chapter 36, of the Charter of Liberties of Henry III, makes this writ gratuitous, Fleta goes to considerable length about this writ, see Appendix.

(*q*) 2 Hale's Pleas of the Crown, 64.

(*r*) Umfreville Lex Cononatoris, XXIX.

(*s*) 27 Assize, 47, and see Crompton Justices, p. 226b.

(*t*) 2 Hale's Pleas of the Crown, 64.

(*u*) 2 Pleas of the Crown, Chapt. 8, Sect. 5.

(*v*) See *ante*, Sect.

(*w*) Mirror, c. 1, Sect. 13, Bracton Lib. 3, fol. 121, 122, 123; Britton, c. 1, Fleta, Book 1, c. 18, Sect. 1; Staundeford's Pleas of the Crown, 48-49-50; see 4 Edward I. For if he takes no fee he will do justice, Staundeford, *supra*, what a comment on our present system.

feiture to the king" (*x*). The statute herein affirms the common law (*y*). Some authors are of opinion that the statute says he must pay the king double every fee he takes. Coke records an instance (*z*) where a coroner was fined 40s. because he would not take an inquest until he was paid 6s. 8d. for himself, and 2s. for his clerk.

In ancient times the coroner was entitled to one penny for every visne (*a*) when they came before the justices in Eyre as pertaining to their office and towards their travail, attendance and charges. "This contribution," observes Sir Edward Coke, "was neither against the common law nor the statute of West. 1 c. 10 (*b*), for they took it not for doing their office, but as a right due to their office which might have a reasonable beginning" (*c*), all of which may be true, but it is very difficult of comprehension to the modern mind; appearing to be a distinction without a difference.

By the statute of third Henry VII, chapter 1 (*d*), the coroner was to receive 13s. 4d. out of the goods of the murderer if he have any, if not, then out of the township (*e*). This statute recites that it is passed because coroners are lax in the performance of their duties and provides for an amercement of 100 shillings for every default. By the statute of first Henry VIII, chapter 7 (*f*), the coroner shall take no fee when the person slain met death by misadventure (*g*).

(*x*) 1 Statutes of the Realm, 40; 2 Coke's Institutes, 176; see also 3 Henry VII, c 1; 2 Statutes of the Realm, 511; Britton, c 1, Sect. 25.

(*y*) 2 Coke's Institutes, 176, and see Fleta Lib. 1, c 8, Sect. 1.

(*z*) 3 Coke's Institutes, 149, and see Umfreville's Lex Coronatoris, 265.

(*a*) Rotuli Parliament, Vol. 1, p. 205; Fitzherbert's Abridgment Title Coroners, 372, and see Staundeford's Pleas of the Crown, 48-49-50.

(*b*) Evidently intending 4 Edward I. It was long classified as above.

(*c*) 2 Coke's Institutes, 176; see Jervis on Coroners, 75, and Staundeford's Pleas of the Crown, 49.

(*d*) 2 Statutes of the Realm, 511.

(*e*) Out of the amercements of the township if he escape, 2 Coke's Institutes, 210; 2 Hawkins's Pleas of the Crown, Chap. 9, Sects. 46-47.

(*f*) 3 Statutes of the Realm, 4.

(*g*) Under pain of 40s and note that in *Rex v. The Justices of Kent*, 2, East, 229 (1809), fees were first refused a coroner on the ground that there was no reason for the inquisition.

Sect. 44. Coroners are exempt from serving on juries (*h*) or in other offices which are inconsistent with their duties as coroner (*i*). They are exempt from arrest *eundo morando vel redundo* for the purpose of the inquest (*k*).

(*h*) Comyns Digest Title Officer, G. 14; 2 Rolle's Abridgment 632; Fitzherbert's Natura Brevium, 167; Umfreville's Lex Coronatoris, 154.

(*l*) 2 Rolle's Abridgment, 632; Fitzherbert's Natura Brevium, 167.

(*k*) There is no authority for this, but it is none the less true.

CHAPTER VI.

CORONER'S INQUESTS IN ENGLAND.

Sect. 45. We now come to the consideration of the inquest to hold which was the principal duty of the coroner. Although the statute (*a*) is silent upon the subject (*b*) it is clearly agreed that the inquest shall be taken upon the view of the body (*c*); and that the coroner could not sit if the body were not found (*d*). So where the body could not be produced (*e*), as where a man threw himself into a river and was drowned (*f*) there could be no inquest. A large part of the evidence before the jury was the body itself and as we shall see the jury had to be sworn *super visum corporis* (*g*). For this reason the inquest had to

(*a*) 4 Edward I, 1 Statutes of the Realm 40. But note that 3 Henry VII, c 1, Sect. 2 says "every coroner upon view of the dead body shall inquire."

(*b*) 2 Bacon's Abridgment, 429.

(*c*) 27 Assize, 55; Britton, c 1, Sect. 7; Staundeford's Pleas of the Crown, 51; Hale's Summary, 170; 4 Blackstone's Commentaries, 274; citing "4 Inst. 271; 2 Hale's P. C., 53; 2 Hawkins's Pleas of the Crown, 42." Staundeford's Pleas of the Crown, Book II, Chapter 52. (Fleta tells us the body must be naked at the time of the view Lib. 1, cap. 25, Sect. 9.) Unless he had a special commission, but the justices of the peace, etc., might, 2 Hawkins's Pleas of the Crown, c 9, Sect. 25.

(*d*) 1 Blackstone's Commentaries, 348, citing "4 Inst. 271." There must be a person dead, Staundeford's Pleas of the Crown, Book 2, cap. 52, the coroner is under no duty to take an inquest upon the body of a monster or unborn child.

(*e*) The Welchman's Case, Latch, 166 (1662) s. c.; Popham, 209 (1656); King v. Parker, 2 Levinz, 141 (1675); Anonymous, 1 Ventris, 352 (1680); King v. Bunney, 1 Salkeld, 190. The Coroner of Montgomery's Case, Noy 87 (1625), but the Justices of Oyer & Terminer may. Foxley's case, 5 Coke's Reports, 110b; 1 Rolle's Reports, 217; Staundeford's Pleas of the Crown, 51; 2 Rolle's Abridgment, 96; Hale's Summary, 170; 1 Hawkins's Pleas of the Crown, c 27; Sects. 12 and 13; 2 *Ibid*, c 9, Sect. 23; 1 East's Pleas of the Crown, 379.

(*f*) The Welchman's Case, Latch, 166 (1662) s. c.; Popham, 209 (1656). In such case the justices of the peace should inquire, see 21 Edward IV, 70; 2 Richard III, 2; 6 Richard II, Coron., 107, and Foxley's Case, 5 Coke's Reports, 110 (1601); 2 Rolle's Abridgment, 96.

(*g*) See *infra*, Sects. 51-52 and see 21 Edward IV, 70; 2 Richard III, 2. The Welchman's Case, Popham, 209 (1656) s. c.; Latch, 166 (1662); King v. Parker, 2 Levinz, 141 (1675); Coroner of Montgomery's Case, Noy, 87 (1625); Fitzherbert's Abridgment Title Coroners, 107; Staundeford's Pleas of the Crown, 51; 2 Hale's Pleas of the Crown, 58; Hale's Summary, 170; 2 Hawkins's Pleas of the Crown, c 9, Sect. 23.

be *super visium corporis* or it was void (*h*). Not only was an inquest otherwise taken of no effect, but the coroner was criminally to blame (*i*). According to the statute (*k*) "when the coroners * * * have command from the king's bailiff * * * to go where any are slain or suddenly dead * * * they ought to go forthwith * * * and * * * make inquiry."

Sect. 46. Various views have been taken of the statute: Lord Hale says (*l*) sudden deaths may be of these kinds: 1. *Ex visitatione die*; 2. *per infortunium*, where no other had a hand in it, as where a man falls from a horse or cart; 3. by his own hand as *felo de se*; 4. by the hand of another where the offender is not known and, 5. by the hand of another where the offender is known whether by murder, manslaughter, *se defendo* or *per infortunium*, but in all these cases the coroner was to inquire (*m*). In the first case above stated there was no more to be done but return the inquest to the next general gaol delivery by the statute of Third Henry VII, chapter 1. In the second the coroner was required not only to return his inquest to the gaol delivery, but to inquire of his deodand, seize and deliver the same to the township which was to be answerable to the king therefor. This was done under the statute of fourth Edward I. In the third case the special matter ought to be found and what goods the criminal had and they were to be seized and delivered to the township which was to be answerable as before. The coroner bound over the first finders to the next gaol delivery. In the fourth case the jury was required to specifically find the culprit unknown; it then became the duty of the coroner to bind over the

(*h*) *Supra*, note (*g*) Anonymous, Ventris, 352 (1680). The view was also important because in the return the manner of death must be stated, the place, length and depth of the wound, etc. See Post, Sect. 57.

(*i*) 2 Hale's Pleas of the Crown, 290; Umfreville's Lex Coronatoris 245; Mr. Petty's MS. of 33 Edward I, there cited.

(*k*) 1 Statutes of the Realm, 40, but see 3 Henry VII, c 1, Sect. 2; 2 Statutes of the Realm, 510 (1487).

(*l*) 2 Pleas of the Crown, 62.

(*m*) How far from the solid rule of law our county courts have wandered will appear later, see Sects. 78 to 93, all but the fifth division have been wiped out and a part of that is gone. The fact that the law of deodand has been abolished is given as an excuse but it is a complete *non sequitur*.

first finders to the next gaol delivery and return, his examination together with his inquisition according to the statute of 1 and 2 Phillip & Mary, chapter 13 (*n*). In the fifth case the coroner ought to proceed to inquire more specifically as we shall see later.

Lord Hale is not wrong in what he states. An ancient authority tells us the coroner inquired of all those who are killed feloniously or by misadventure out of houses or otherwise (*o*). But as time wore on this rule came to be limited. We have numerous examples in the rolls printed by the Selden Society of inquisitions upon persons "suddenly dead" who were not killed. The ancient writers seem to contemplate that the coroner should only act where a man is killed (*p*). Some expressly say "killed by felony or misadventure" (*q*), yet even the Mirror leaves open the possibility of a death by an unknown cause which the author is pleased to call a "visitation of God" (*r*). The distinction between a sudden death from perfectly natural causes and one which requires the coroner's attention is at best shadowy (*s*). The trend of the decisions has been toward restraining the coroner's jurisdiction (*t*). So East tells us (*u*) "if a party died of a fever or apparant visitation of God there is no call for the coroner to act" (*v*). The coroner was to use his sound discretion as to when he

(*n*) And note the ancient manner of inquest whether by coroners or justices in Eyre was 1. *Quis premis inventur?* 2. *An male creditur?* If so, then if he were present he might be arraigned if absent they went on the outlawry against him, but if the jury answered *non male creditur* he was discharged, 35 Henry VI, 15a, Brooke's Abridgment Conspiracy, 4.

(*o*) 22 Assize, 94.

(*p*) Mirror, c 1, Sect. 13, and Britton, c 1, Sect. 10-12; Fleta, Book 1, c 25, Sect. 2, the idea seems to be that of killing rather than dying.

(*q*) Mirror, c 1, Sect. 13; Bracton, c 1, Sect. 5 (Homicide or anything of that nature, Fleta Lib. 1, cap. 25).

(*r*) Mirror, c 1, Sect. 13.

(*s*) See the distinctions drawn in Part II.

(*t*) The case of King *v.* the Justices of Kent, 11 East, 228 (1809) began this tendency and see Part II, Chapter VI, as to the modern rule.

(*u*) 1 Pleas of the Crown, 378.

(*v*) See Sect. 34 where this question of the duty of the coroner to act where the party is dead by "visitation of God" is discussed and see the act of 3 Henry VII, *supra*.

should hold an inquest; yet the same author tells us there ought to be at least a reasonable suspicion that the deceased came to his death by unnatural means (*w*). We cannot altogether agree with the learned author. It is certain the inquest was not to be taken merely because of the solicitation or procurement of the friends of the deceased (*x*), but it should not be held unless the coroner was called upon to act. Under the early authorities it would seem that suddenness was sufficient, but even in 1680, it is doubtful if the mere fact that a death was "sudden" was enough to justify an inquest. It ought to be more than "sudden." It would be going too far to say it should be suspicious or even unnatural, the inquest ought not only to be taken where there is suspicion of felony or unnatural death, but also where there is a reasonable possibility of felony or unnatural death.

Sect. 47. When notice was given to the coroner it was his duty to issue a precept to the constables (*y*) of the four (*z*) five or six (*a*) next townships to return a competent number of good and lawful men of their townships before him at a place designated to make inquisition touching the matter of which he had been notified (*b*). This was to be done and the day for the inquest set as soon as possible after the death (*c*), and the view should be had if possible while the body was in the same position, and other circumstances as when the person died (*d*). Blackstone says the coroner must sit at the very place where the death happened (*e*). While it may seem presumptuous to disa-

(*w*) 1 East's Pleas of the Crown, 382.

(*x*) Umfreville's *Lex Coronatoris*, 186; Britton, c 1, Sect. 25.

(*y*) Or the constable of the hundred, 2 Hale's Pleas of the Crown, 59, or the hundredor, Mirror, c. 1, Sect. 13, or to the sheriff or bailiff of the place, Britton, c 1, Sect. 5; Fleta Lib. 1, cap. 25.

(*z*) Britton, c 1, Sect. 5, Mirror, c 1; Sect. 13; 2 Hale's Pleas of the Crown, 59.

(*a*) The only authority which says "five or six" vills might be summoned is the Statute of 4 Edward I; 1 Statute of the Realm, 40.

(*b*) 2 Hale's Pleas of the Crown, 59.

(*c*) Britton, c. 1, Sect. 5; Mirror, c. 1, Sect. 13.

(*d*) *King v. Solgard*, Andrews, 231 (1738), s. c. 2 Strange, 1097. In that case the Chief Justice said there was a sufficient reason for the removal of the body, viz., to prevent infection.

(*e*) 1 Commentaries, 348.

gree with so learned an authority we are forced to the conclusion this was not the law. The inquest need not be taken at the very same place where the body was found (*f*) nor where the view was had (*g*), the inquest has the right to adjourn to a more convenient place (*h*) and time, but the inquisition being a judicial proceeding should therefore not be taken on Sunday which is a "*dies non judices*" whereon no judicial act could be done (*i*).

Sect. 48. The proceedings of the coroner at the inquest and the scope of his inquiry are more or less matters of unwritten law and therefore varied from time to time. In general, it may be said that the coroner inquired of all those who were killed (*j*) feloniously or by misadventure (*k*) out of houses (*l*) or otherwise (*m*), who first found the body (*n*), whether men or women (*o*), and of what age, whether minors or not (*p*), and these he let by main-prize (*q*), unless the deceased had had rites of the Church (*r*), all the circumstances relative to the death (*s*) and all things that occasioned it, whether it came from God or man

(*f*) 3 Bulstrode, 173.

(*g*) The Welchmen's Case, Popham, 209 (1656), s. c. Latch, 166 (1662); see 2 Hawkins's Pleas of the Crown, c. 9, Sect. 25.

(*h*) 2 Hawkins' Pleas of the Crown, c. 9, Sect. 25.

(*i*) Rex v. Mackalley, 9 Coke's Reports, 666 (1612); 2 Burn's Justices, 30; Umfreville's Lex Coronatoris, 177; Jervis, p. 279. If it is held on Sunday it is void, King v. Bunney, 2 Saunders, 291.

(*j*) 22 Assize, 94; Bracton, f. 121b; 4 Edward I, 1 Statutes of the Realm, 40.

(*k*) 22 Assize, 94; Mirror, c. 1, Sect. 13; Britton, c. 1, Sect. 9.

(*l*) 22 Assize, 94.

(*m*) Fleta Lib. II, cap. 25, Sect. 2.

(*n*) 22 Assize, 94; 6 Viner's Abridgment, 243; 4 Edward I, *supra*; Britton, c. 1, Sect. 24; Mirror, c. 1, Sect. 13, qualifies this to cases where the death was due to accident, Fleta, Lib. II, cap. 25, Sect. 2.

(*o*) 22 Assize, 94; Bracton, f. 121b; 4 Edward I, *supra*; Britton, c. 1, Sect. 24; Fleta, Lib. II, cap. 25, Sect. 2.

(*p*) 22 Assize, 94; Bracton, f. 121b; Britton, c. 1, Sect. 24; 4 Edward I, *supra*, who says they should note also of what discretion they are.

(*q*) 22 Assize, 94; 4 Edward I, *supra*; Fleta, Lib. 2, cap. 25, Sects. 4 and 6.

(*r*) 30 and 31 Edward I, 522, and see Bracton, f. 135.

(*s*) Keilw., 61-67 Queen v. Clerk, Salkeld, 377 (1702); Mirror, c. 1, Sect. 13; Britton, c. 1, Sect. 12; Fitzherbert's Abridgment, title Coroners, 292; Staundeford's Pleas of the Crown, 51; 1 Hale's Pleas of the Crown, 422-4; 2 Hale's Pleas of the Crown, 58-62; 2 Hawkins' Pleas of the Crown, c. 9, Sect. 28; Fleta, Lib. II, cap. 25, Sect. 2.

(*t*). He was to find out if the man was killed, or if he killed himself (*u*), or if the death were caused by accident which might be determined by the hurts on the body (*v*). Thus, if the accident happened by drowning, whether it was in the sea or in fresh water, and if in the latter, whether in a mote or ditch, and how it came to pass that the person was drowned (*w*), who owned the vessel if he fell from a vessel, and if the drowning was in a well, the inquiry should be as to who owned the well (*x*), and whether it was dangerous to the community (*y*). If the death was caused by a fall, the inquiry should be whether it was from a mill, a horse, or a tree (*z*), and how the fall occurred (*a*). If from a mill, what things were moving in the mill should be ascertained, who owned it and the value of the utensils moving toward the death, in order to determine the value of the deodand (*b*). If the accident resulted in a killing, the coroner should inquire if it were done by a man, a woman, a beast, or a thing (*c*). If done by a beast, whether it was a dog or other beast and whether set on by any man (*d*). If the death was done by killing, the coroner should inquire whether by felony or misadventure, or *se defendo*, who caused the death, whether he was killed at a wrestling match, or tavern or other assembly (*e*), and the manner of the killing (*f*), whether he was killed in a house or in the fields (*g*), if he were killed, where found, or killed

(*t*) Mirror, c. 1, Sect. 13, from famine, poverty or common pestilence; with or without malice prepense, Britton, c. 1, Sect. 26.

(*u*) Anonymous Jenkins, 202, in pl. 24; Mirror, c. 1, Sect. 13; Britton, c. 1, Sect. 13.

(*v*) 4 Edward I, 1 Statutes of the Realm, 29.

(*w*) Britton, c. 1, Sect. 26; c. 1, Sect. 2.

(*x*) *Ibid*, c. 1, Sect. 3.

(*y*) The reason being that the owner was to be amerced at the presentment and obliged to fill it up. Umfreville's *Lex Coronatoris*.

(*z*) Britton, c. 1, Sect. 27.

(*a*) King *v*. Cross, Keble, 744 (1664).

(*b*) Mirror, c. 1, Sect. 13.

(*c*) Britton, c. 1, Sect. 29.

(*d*) Britton, c. 1, Sect. 13.

(*e*) 3 Henry VII, c. 1, Sect. 2; 2 Statutes of the Realm, 510 (1487); Mirror, c. 1, Sect. 13; Bracton, f. 121b, 4 Edward I, *supra*.
Britton, c. 1, Sect. 10; see Fleta Book, 2 cap. 25.

(*f*) Britton, c. 1, Sect. 10.

(*g*) Bracton, f. 121b; 4 Edward I (*supra*).

elsewhere and brought there (*h*), and should trace his steps and find where he lodged the night before, and whether he was known or unknown (*i*), and whether any one had threatened his life or limb (*k*), and if so, who were their pledges to keep the peace (*l*). If it was found to be murder, the coroner ascertained who were the aiders (*m*), abettors and consenters (*n*), and who were present when the murder was committed (*o*), if the hue and cry were raised (*p*), who were accessories before the fact (*q*), but not the accessories after the fact (*r*), and whether principals fled (*s*), if not, they were to be seized and turned over to the sheriff (*t*). In the case of murder or manslaughter, the coroner should inquire of all the goods and chattels, lands and tenements (*u*), of the principals and ac-

(*h*) Mirror, c. 1, Sect. 13.

(*i*) Bracton, f. 121b; 4 Edward I, *supra*; Fleta Book 1, Chapter 25, Sect. 6; Fleta tells us the host of the tavern where he last lodged is to be attached, *ibid*.

(*k*) Mirror, c. 1, Sect. 13; Britton, c. 1, Sect. 14.

(*l*) Britton, c. 1, Sect. 14.

(*m*) Evidently the authorities refer to those present aiding, abetting and counselling, though they do not say so; see 2 Hale's Pleas of the Crown, 63.

(*n*) 3 Henry VII, c. 1, Sect. 2; 2 Statutes of the Realm, 510 (1487); Bracton, f. 121b; Britton, c. 1, Sect. 10; Hale expressly says those present and makes a distinct class of accessories, 2 Pleas of the Crown, 63.

(*o*) 3 Henry VII, c. 1, Sect. 2, *supra*; both young and old males and females, Britton, c. 1, Sect. 10.

(*p*) Mirror, c. 1, Sect. 13.

(*q*) 2 Hale's Pleas of the Crown, 63; 4 Henry VII, 18b; Daliston, 32 pl 19; Jenks, 177 pl. 54.

(*r*) See *infra*, Anon. Moore, 29 pl. 95; 4 Edward I, Sect. 2; 3 Henry VII, c. 1; 4 Henry VII, 17; Staundeford's Pleas of the Crown, 183; Britton says he is to inquire as to accessories after the fact, c. 1, Sect. 10, and such cases are to be found, Selden Society's "Select Coroners Rolls," 30; but from the nature of the coroners' duies such an inquiry is no proper part of it. Therefore "*fugam fecit*" of one accessory after the fact is void, Staundeford's Pleas of the Crown, 183-4. See 4 Henry VII, 18b.

(*s*) 2 Hale's Pleas of the Crown, 63; Britton, c. 1, Sect. 12, for if they find he fled, "nay though the petit jury upon his trial find him not guilty nor that he fled, yet this inquisition before the coroner shall cause a forfeiture of his goods for it is not traversable." Anonymous, Dyer, 238b; Staundeford's Pleas of the Crown, 183b; 1 Hale's Pleas of the Crown, 363-417; 2 Hale's Pleas of the Crown, 63; Fleta, Lib. II, cap. 25, Sects. 2 and 7.

(*t*) Fleta, Lib. 2, cap. 25, Sects. 3 and 5.

(*u*) *Supra*, note (*s*); 4 Edward I, *supra*; Britton, c. 1, Sects. 13 and 22; Fleta says this is only done where he had fled, Book 2, cap. 25, Sect. 7.

cessories, and they had to be appraised and sold and the money turned over to the township to keep (*v*). If the person died in prison, the coroner must inquire whether he died from long imprisonment or by torture (*w*).

But the scope of the coroner's inquest was even broader than this. Not only was he to inquire of the crime where crime had been committed, but he had a more general authority to inquire into the reason of all deaths by misadventure and prevent a repetition thereof. Thus, where a man fell through a bridge, the inquest might find there was a nuisance (*x*), and if a person be drowned in a pit, the coroner could command the vill to stop it and if it be not done the vill might be amerced in eyre or before the justices of gaol delivery (*z*).

Sect. 49. The inquest must be a good one, if it were not, it was the duty of the coroner to take another (*s*). If the coroner had reason to suspect that the truth was concealed or not fully investigated he was to cause another inquest to be taken (*t*), but this was done only with greatest caution. If the first was informal, a second could be taken and the body could be disinterred in order that it be taken *super visum corporis* (*u*). It was considered better practice, however, to obtain leave of court if the body had already been buried (*v*). So if the coroner took an

(*v*) Britton, f. 7; 4 Edward I; 2 Hale's Pleas of the Crown, 63; where the learned author says: "How far is this altered by 1 Richard III, cap. 3"? See 1 Hale's Pleas of the Crown, 365, cap. 27.

(*w*) Mirror, c. 1, Sect. 13.

(*x*) Hall's Case, Allen, 51 (1648), and the vill has been amerced had it not been that they did not find that the vill was bound to repair it; and see Keilw., 61.

(*z*) 8 Edward II, Coron. 416. Fleta tells us the owner should be fined and enjoined to provide guards, lib. 1, cap. 25, Sect. 10.

(*s*) 1 Strange, 22-533; Queen *v.* Clerk, 1 Salkeld, 377 (1702); Staundeford's Pleas of the Crown, Book 2, cap. 52.

(*t*) Britton, c. 1, Sect. 11. This was done in 1270, Selden Society, "Select Coroners Rolls," 25.

(*u*) Where the first inquest was informal, all the coroners fourteen days afterwards took the body up and held the inquisition over again on the suggestion of Sergeant Janney, whose servant had been killed, and the second inquest was held valid, 2 Richard III, 2 pl. 5, and *vide* 21, Edward IV, 70-71, and Staundeford's Pleas of the Crown, Book 2, cap. 52.

(*v*) Where the body has been buried and the inquest is afterwards quashed, there must be leave of court to take it up, Berkley's Case, 2

inquisition without view of the body and afterwards took another *super visum corporis*, the second was good, for the first was absolutely void (*w*). But if the first inquest was good and afterwards another coroner took another inquisition, the second was absolutely void because the first was good (*x*). But once the inquest had been filed it was not traversable (*y*). The proper practice to get it off the record seems to have been to petition for a *melius inquirendum* and the petition must be accompanied by an affidavit of a *male se gessit* on the part of the coroner (*z*).

Sect. 50. Having now considered the subject-matter of the inquisition, the question naturally arises as to how it was taken. The first factor in the inquest was the coroner whose duties in this regard we have considered, the second factor was the jury. When notified of the necessity to act, the coroner issued a precept to the sheriff, constable or bailiff, as the case might be, to summon a jury (*a*). If there was any default either by the constable or the jurors, the coroner made a record of it, and they were amerced; "anciently," says Lord Hale, "before the justices in eyre,

Sid. 101, 1 Salk. 377. In *Rex v. Saunders*, 1 Strange, 167 (1719), the Court said the coroner could not take the body up without leave of court. In *Anonymous*, 1 Strange, 533 (1723), the Court granted a rule for the coroner of Wenlock, in the County of Salop, to take up a body in order for a new inquisition, the former having been quashed. Indeed, in *King v. Bunney*, Carthew 72, 1 Salk. 190, it was decided an inquest might be held a year after the death and still be good, but it was agreed that the coroner is not justified in disinterring a body which has been buried for more than a year, "for it is a common nuisance and insufferable." But note an inquest taken a year after the body was buried has been received and filed, and this seems to be in the discretion of the Court, 1 Str. 22-533, 1 Salk. 377.

(*w*) Wingfield's Case, 21 Edward IV, 70-71 (2 Hale's Pleas of the Crown, 59).

(*x*) Richard II, coron. 107; Crompt. Just., 229; 2 Hale's Pleas of the Crown, 59; Fitzherbert, 107; Staundeford's Pleas of the Crown, Book 2, cap. 52.

(*y*) *King v. Heatherfall*, 3 Modern, 80; though this has been made a subject of gravest doubt, Post, Sect. 58. The proper practice is said to be to move to quash the inquest before it is filed. But the reason given is doubtful, a *melius inquirendum*, not being *super visum corporis*, is traversable; but so is the coroner's return, Post, Sect. 58.

(*z*) Miles Berkley's Case, 2 Siderfen, 90-101-144, s. c.; 2 Keble, 859; *King v. Heatherfall*, 3 Modern, 80; 4 Coke's Reports, 57; Croke's Elizabeth, 371; *King v. Bunney*, Carth 72, 1 Salkeld, 190; *Queen v. Clerk*, 1 Salkeld, 377; *Rex v. Saunders*, Strange, 167; *Anonymous*, Strange, 533.

(*a*) See *ante*, Sect. 26.

but now before the justices of gaol delivery" (b). The coroner, it would seem, could not fine the jurors or constables for non appearance, but could only present his record to the sessions (c).

The coroner made his inquest by four vills (d), yet he might summon more in his discretion and probably abused this power. Lord Coke tells us (e) the "coroner would summon many townships, sometimes the whole hundred where twelve would serve to make the inquiry" (f). To remedy this the statute of Marlbridge (1267) in chapter 24, provides:

"The justices in eyre from henceforth shall not amerce townships in their circuits because all being twelve years old came not afore the sheriffs and coroners to take an inquiry of robberies, burnings of houses, or other things pertaining to the Crown so that there come sufficient out of those towns by whom such inquests may be made full except enquests for the death of a man whereat all being twelve years of age ought to appear unless they have reasonable cause for absence" (g).

Sect. 51. All persons who were summoned were bound to appear. No particular qualifications by estate was necessary to those who had the right and duty to take part in the inquest (h). The jurors were not challengeable by either party (i), but it was deemed wiser to admit such challenges as the parties desired to make, as we shall see later. The jurors were, however, required to be *probi et*

(b) 2 Hale's Pleas of the Crown, 59.

(c) Mirror, c. 1, Sect. 13.

(d) See Post, Sects. 51, 52.

(e) 2 Institutes, 147.

(f) A case dated 1338, where four townships were amerced for not coming, appears in Select Coroners Rolls, 42.

(g) 1 Statutes of the Realm, 25 (1267).

(h) Jervis on Coroners, 252. In 1305, the king ordered an inquiry whether the coroners put poor people on the jury to spare the rich, 7 Political Science Quarterly, 656 (1892); where the inquest was to be had over one who died in prison, the jury was to be composed of six laymen and six prisoners, Jervis, 39; Umfreville, 213.

(i) Mirror, c. 1, Sect. 13; Britton, f. 6a; Withipole's Case, Croke's Charles, 134; Jones, 198-9; Ley., 81 (1628); Crompton's Justices, 226b.

legalis homines (*k*). All men are presumed to be such (*l*), but the contrary could be shown (*m*). Aliens, convicts and outlaws are not *probi et legalis*, and it would seem that if any such were impannelled on the coroner's inquest it would be a good plea to avoid the inquisition (*n*). In the case of William Withipole (*o*) it was pleaded, to the coroner's inquisition, upon the statute of II Henry IV, chapter 9, that several of the jury were nominated by the foreman two were outlaws in actions of debt; upon which it was agreed by the several justices and barons that the statute applied to inquests before the coroner and that an outlaw in personal actions was not *probus et legalis homo* to be sworn on an inquest and might be challenged for that cause (*p*).

The point was not, however, judicially determined, for the case went off on other grounds, but it is deserving of consideration inasmuch as it shows that outlaws in actions personal are not *probi et legalis* (*q*). It would seem, therefore, although it is agreed that jurors upon inquests are not challengeable (*r*) to be advisable to reject from coroner's juries, persons under any of these disabilities and to allow a challenge properly made; for not swearing of a juryman is of less consequence than the risk and hazard of a plea to the inquisition. Jurors ought also to be householders and to be persons who are indifferent to the subject matter of the inquiry (*s*), but if they were not the inquest was not void therefor. Their number was immaterial provided twelve agreed (*t*) but if there were less than twelve the inquisition was bad (*u*).

(*k*) Lord Raymond, 1303, for if an indictment be made by a jury one of whom is not *probus* (*e. g.*, an outlaw), it is void, 3 Coke's Institutes, 34. See 1 Wms. Saunders, 363.

(*l*) Stephens' Digest of Criminal Procedure, Art. 212; 4 Justices of the Peace (Eng.), 535, quoting Coke, but without citation.

(*m*) Stephens' Digest of Criminal Procedure, Article 212.

(*n*) 2 Hale's Pleas of the Crown, 155.

(*o*) Croke's Charles, 134-147; Jones, 198-9; Ley, 81 (1628).

(*p*) See 2 Hale's Pleas of the Crown, 59.

(*q*) The inquisition was quashed.

(*r*) Mirror, c. 1, Sect. 13; Britton, c. 2, Sect. 11 (Nichols Edition).

(*s*) Fortescue de Laudibus, c. 25.

(*t*) Smith's Case, Comberback, 386 (1697).

(*u*) Cobat's Case, 1 Hale's Pleas of the Crown, 161, note.

Although by the statute *de officio coronatore* (v) the coroner is directed to summon his jury out of the four, five or six next adjacent townships and by the ancient practice it is usually so expressed in the inquisition, yet that statute being merely directory, the rule did not always prevail, and no precise number of villis was necessary; the neighborhood being supposed to be the best judge of the fact to be inquired into; for which reason an inquisition was good if it purported upon its face to have been taken by jurors from the country at large (w), for the court would intend that the inquisition was of the four next villis and according to the statute. The coroner was not bound to return particularly that the villis are "*proxime adjacentium*" (y), but the contrary might be shown (z).

In *Rex v. Crosse* (a) it was objected "that the coroner's inquisition *super visum corporis* did not purport to have been taken according to the statute *de officio coronatore* * * * by the oaths of those of the next villis but by men of the parish of Axminster," but the exception was overruled. The same exception was taken and overruled in *Barclee's case* (b) and since the case of *Sir John Pettys* (c) where the inquisition was taken by a jury "*de civitate Norwici*" and *Twisden, J.* (d) overruled the motion to quash, no similar exception has been taken (e).

Over this meeting of the four villis the coroner presided (f). The jury were judges of the facts and the coroner had no right to instruct them thereon, but on the law he could instruct them (g) and they were bound to pay strict at-

(v) 1 Statutes of the Realm, 40.

(w) *Jervis on Coroners*, 38; but, *contra*, *Welchmen's Case*, *Popham*, 209 (1656); s. c. *Latch*, 166 (1662); *Sed. quare*. See 2 *Coke's Institutes*, 354.

(y) 1 *Siderfen*, 204 (1664); *King v. Cross*, *Popham*, 210 (1656); see *Britton*, f. 7a.

(z) *Berkley's Case*, 2 *Siderfen*, 90-101-144 (1658); see *Welchmen's Case*, *Popham*, 209; s. c. *Latch*, 166 (1662).

(a) 1 *Siderfen*, 204; 1 *Keble*, 723.

(b) 2 *Siderfen*, 144.

(c) 2 *Keble*, 705-733; also *George Bradbury*, MS.

(d) Citing *Berkley's Case*, *supra*.

(e) *Jervis on Coroners*, 254.

(f) 1 *Blackstone's Commentaries*, 348.

(g) *Jervis on Coroners*, 256.

tention to his instructions "*ad questionem facti non respondent judices ad questionem legis non respondent juratores (h)*).

Sect. 52. The jury appearing they were to be sworn (i) and charged by the coroner to inquire upon the view of the body how the party came to his death (k). The body itself was a large part of the evidence and so the jury must be sworn *super visum corporis* or much of the evidence would be given with the jury not under oath (l). They must, moreover, be sworn by the coroner himself (m).

It was their privilege to call back any witness who had testified before them to ask any question elucidatory of their inquiry, and they were entitled to the opinion of the coroner on matters of law (n). In early times they might have returned a verdict without any evidence before them, *i. e.* from their own cognizance of the case, but as the whole system of the jury has changed it came to be considered best that those who knew anything about the case should so inform the coroner who should then not swear them on the jury (p).

As we shall see later the jury was composed of twelve men and four vills (q) in early times (r). Just what the relation of these two constituents was, it is difficult to ascertain. We are told that if the jury were not unanimous the coroner took their poll and if twelve agreed that was the

(h) Vaughan's Reports, 160.

(i) Umfreville's Lex Coronatoris, 187; Jervis on Coroners, 257; Britton, c. 1, Sect. 6. The form of oath is given in the Mirror, c. 1, Sect. 13. It is too lengthy to be here set out, especially as it is now obsolete. It appears as an appendix.

(k) 2 Hale's Pleas of the Crown, 60.

(l) Jervis on Coroners, 256. But by 6 and 7 Victoria, c. 83, Sect. 2, they need not view the body at the same time with the coroner, by Reg. v. Ingham, 5 Best and Smith 257, or be sworn *super visum corporis*.

(m) For only the coroner can take the inquest, *ante*, Sect. 41; and see Rex v. Ferrand, 2 Barnwell & Alderson, 260.

(n) Jervis on Coroners, 257.

(p) Jervis on Coroners, 258.

(q) Select Coroners Rolls, 40-41, the number of the jury was indeterminate, at Oxford in 1297-1307, 22 to 30 served on the jury. Rogers' Documents, 150-168, 12, 13, 15, 21 at Wallingford Hist. MSS. Com. VI, 583, *ibid*.

(r) 1338, 1365, respectively, are the dates of the two cases above quoted.

verdict of the jury, but if no twelve could agree they were to be kept without meat, drink or fire until twelve did agree (*s*). If they still did not agree the coroner could not take the verdict, but they should be fined (*t*). In Travener's case (*u*) the jury refused to give up their verdict, so the coroner adjourned them from time to time and from place to place; Fleming, C. J., hearing of the case, wrote to the coroner not to take a verdict of them, whereupon the coroner went to assize at Hertford and for his discharge acquainted the judges with it and the jurors were fined and the indictment was taken and the court commended the coroner for the care he had taken in the business (*v*). In view of the composition of the jury it is not strange to find it recorded in Britton (*w*) that the coroner shall not alter his enrollment on account of any contrariety in their verdicts. Umfreville thus annotates this paragraph:

This paragraph is darkly expressed, but it is only to be enlightened by guess. Does he mean other jurors or other evidence? From the exclusion of the paragraph it might seem to mean another jury, but this cannot be for the coroner could not summon a second jury. It must refer to the different opinion of the different vills, which Umfreville tells us often caused adjournments of the inquests and made further evidence necessary. When they could not agree, then the vills were separated and questioned and the verdict of each vill taken and final verdict of the inquest was the one in which the majority agreed.

What happened if they finally could not agree does not appear ever to have been determined (*x*) but in practice that never did. We have indeed one case where they did not agree in 1270, two of the townships agreeing and two refusing to give a verdict, saying they knew nothing about the matter (*y*).

(*s*) Jervis on Coroners, 258.

(*t*) Travener's Case, 3 Bulstrode, 173.

(*u*) 3 Bulstrode, 173.

(*v*) See Comberback, 368.

(*w*) C. 1, Sect. 11.

(*x*) Stephens' Digest of Criminal Procedure, Article 227.

(*y*) Select Coroners Rolls, Selden Society, Vol. 9, p. 25.

The coroner was bound to accept such presentment as the jury made (*z*) and should never alter his enrollment of their verdict (*zz*). Therefore in a case in which after the jury had been sworn, the coroner took some of them off and they found a verdict of *non compos mentis*, although the evidence was very strong that it should have been *felo de se*, Holt, C. J., quashed the inquisition and said there ought to be an information against the coroner (*a*). The coroner cannot, by way of punishment for not finding according to the evidence, adjourn the jury to places at a great distance from where the fact was committed, but it has been held an adjournment to assize is proper (*b*).

There is, of course, the old question as to whether the jury has a right to find contrary to their instructions, but in accordance with moral right. A discussion of that question belongs properly to a work upon juries in general, and not to a discussion of the office and duties of coroner, bearing in mind the remark of Littleton "If the inquest will take upon them the knowledge of the law they may give their verdict generally" (*c*), and that on the whole the immediate and direct right of deciding upon questions of law is entrusted to the court while the jury is at most only incidental (*d*) and also remembering that if the coroner's jury usurp his powers and take upon themselves to find the law and the facts, there is no method whereby to punish them if their finding is improper (*e*). The writ of attainder did not extend to criminal cases nor to inquests of office (*f*). As has been said the jury could be fined in such

(*z*) Smith Case, Comberback, 383 (1697); Alderman's Case, 2 Levinz, 152 s. c.; *sub nom* Rex v. Alderman, 1 Ventris, 278; *sub nom* Anonymous, Freeman, 419-433.

(*zz*) Where a coroner inserted in the inquest that the jury found three persons guilty of murder, where they in fact found but one, he was adjudged to have committed forgery, indicted and found guilty, Fleta, Book 2, cap. 25, Sect. 3.

(*a*) King v. Stukeley, 12 Modern, 423 (1702).

(*b*) Per Holt, C. J., Smith's Case, Comberback, 383 (1697).

(*c*) Coke upon Littleton, 228.

(*d*) Hargrave & Butler's note, *ubi supra*.

(*e*) Jervis on Coroners, 256.

(*f*) Comyns' Digest, title Attaint B.

a case (*g*), but it would seem to be an exercise of their judicial office for which they would not be accountable (*h*).

The relation of the coroner's jury to the petit jury is most interesting. Gross discusses it at length in his Introduction to Select Coroner's Rolls he says, in effect (*i*).

First, it is to be noted the word by which the coroners' court is called "*Inquisitis*" which is a generic word in its origin, referring to a new system of procedure and was therefore applicable to all juries whether judicial or administrative. The composition of the coroner's jury in the thirteenth and fourteenth centuries varied somewhat in different localities and different times. Most commonly it consisted wholly or in part of a representation from four neighboring townships (*villatate*) namely that in which the body was found or the death occurred and the three nearest villis. Sometimes the jury was taken from five and less, frequently, from three, six or eight. The most common form of inquest-jury mentioned in the Selden Rolls is that in which the verdict is found by twelve men together with four neighboring townships or tithings, the twelve men probably representing the whole hundred. The four villis and the twelve men seem often to have been regarded as two distinct bodies; their verdicts seem to have been given separately. Then again, each vill could make its own statement or the villis could find a verdict collectively and severally. The number of persons from each villata seems to have been indeterminate; it was regulated by no definite rule or principle, as many were summoned as were deemed sufficient for the inquest. In most of the cases where the number is stated, each township sent its reeve and four men, the whole jury consisting of thirty-two persons. Many inquests were, however, held "*per XII juratores*," etc. These often came from the four neighboring villis.

"The inquest was sometimes held before more than one coroner. In Cambridgeshire the bailiff of the hundred summoned the jury and in townships the freeholders were

(*g*) 2 Hawkins' Pleas of the Crown, c. 22, Sects. 21-22.

(*h*) Fortesque de laudibus by Amos 9, Vaughn's Reports, 198.

(*i*) Gross's Introduction to Select Coroner's Rolls, XXX.

amerced if they did not appear before the coroner. Townships were often amerced at the eyre for refusing to come or for not appearing in full.

"These details throw some light upon the relation of the four townships to the twelve juratores of the hundred who at the eyre presented and also tried persons accused of crime. During Henry III's reign this jury, after having presented that a certain person is suspected of crime, is asked to say in so many words whether this man is guilty or no. If it finds him guilty, then the four neighboring townships are sworn and answer the same question. If they agree with the hundredors, sentence is passed * * * by the end of Henry III's reign it is common that the question of guilt or innocence should be submitted to the presenting jury, to the jury of another hundred and to the four vills * * * the practice of swearing in these villagers seems to be abandoned (in Edward I's reign) as the accused acquires his right to a second jury of free and lawful men. The importance of these vills as an element in the body that tried the accused has been pointed out by Professor Maitland in his introduction to *Pleas of Gloucester*. He rightly remarks that the history of the petit jury is still in manuscript. He is inclined to seek its germ in the *quatuor villatae*; their representatives become a second body of witnesses who could traverse the testimony of the hundred jury. This is a plausible theory. If the work of the neighboring towns at the eyre was not the germ of the petit jury it was at least a stage in the development of procedure which future historians of trial by jury cannot safely ignore (*k*).

"The origin of the traverse or trial by jury was probably connected with a specific class of cases, namely, appeals of felony, before and after the abolition of the ordeal (*circum* 1219) for which the petit jury was substituted. The appellee was often tried by a jury instead of wager of battle. When such an appeal was presented by the jurors of the hundred, the neighboring vills were sometimes asked

(*k*) *Pleas of Gloucester*, 29; 2 Palgrave's Commonwealth, 185.

for their testimony and on that testimony the accused might be declared guilty or innocent. In these appeals and in trials resulting from ordinary presentments by the public voice, the four townships often appear to be regarded as a body distinct from the accusing juratores, a body, in fact, which virtually decides the case like the later petit jury.

"The neighboring vills were sometimes also employed in connection with the presentment jury in making accusations and in such cases much weight was attached to their testimony. The villatae were probably not a regular part of either the accusing or the trial jury, but were called upon in certain emergencies to add their knowledge of the facts to that of the juratores, seemingly when the latter were in doubt or when the court deemed it expedient that they should be aforced. When such use was made of the vills their declaration was generally accepted by the court as a decisive verdict. The number of persons from each of the four townships added in this way to the hundred jury is rarely stated in the printed sources, but would naturally be the reeve and four men who usually appear at eyre to represent the township.

"This activity of the neighboring *villatae* in criminal pleas may perhaps be largely due to the fact that the township has already in most cases made a careful investigation of the offence in connection with the coroner's inquest and would therefore have more exact knowledge of the facts than the hundred jury. The same four vills that made the preliminary inquiry before the coroner would often participate in the final trial before the justices. The jury of twelve men of the hundred also had its counterpart in many coroner's inquests. In these inquests as in the eyre the twelve jurors brought in their verdict either by themselves or in conjunction with the four vills.

"There is another way in which the coroner's inquest may have influenced the growth of trial by jury. At some of the inquests, evidence by persons not in the jury was taken (1). The facts so ascertained were entered in the

(1) This was certainly done in 1270, Select Coroners Rolls, 25, in 1271 Select Coroners Rolls, 16.

rotuli coronatoris for use before the itinerant justices. The evidence produced at the inquest would also be generally known to the representatives of the townships and when they acted in conjunction with the trial jury, would have weight in the final proceedings at eyre. Thus, in the coroner's jury there seems to have been, at least in some cases, a nearer approach to the determination of truth from the evidence of witnesses than in the early petit jury whose verdict was based on previous knowledge of the facts. The coroner's jury may indeed be regarded as one of the links uniting the old system of procedure to the modern practice of deciding matters upon the evidence of witnesses openly examined in court."

Sect. 53. The jury having qualified and the view had the other evidence was then in order. The body, as has been seen, was a large part of the evidence, the marks or wounds upon the body were carefully observed by the jury (*m*), and their length, breadth and depth, carefully noted (*n*). All the evidence had to be on oath (*o*). A peer might, at his election, affirm on his honor, and if he did, there was no remedy (*p*), but he could not then be competent as a witness. To qualify he must be sworn (*q*), but he could not be compelled to be sworn (*r*).

It seems to have been the duty of the coroner to inquire impartially and fairly without prejudice or favor to any one or any view of the case. It was his duty to hear all the evidence that was offered to him (*s*). As Hale quaintly says, "in cases where the inquest is conclusive, the coroner must hear the evidence both for and against king, for there is no man to be condemned to death, but only a

(*m*) Britton, c 1, Sect. 7.

(*n*) 4 Edward I, 1 Statutes of the Realm, 40.

(*o*) Umfreville Lex Coronatoris, 187; 2 Hale's Pleas of the Crown, 61-157; King v. Scorey, 1 Leach, 43 (1749), a Jew should be sworn on the Old Testament, Strange, 113, a Moor on the Koran, Strange, 1104.

(*p*) Fort. Rep., 394-395, vide 3 Keb. 63; Umfreville Lex Coronatoris, 188.

(*q*) Umfreville's Lex Coronatoris, 188.

(*r*) Freeman's Reports, 422-423.

(*s*) 2 Hale's Pleas of the Crown, 157; King v. Scorey, 1 Leach, 43 (1749).

fact to be inquired into" (t). In the case of *King v. Scorey* (u) where a man had been killed in a nobleman's forest by the defendant, one of the underkeepers, the coroner refused to receive the evidence of the underkeeper who was with Scorey to the effect that they had authority as keepers of the forest. The coroner told the jury that they must find it murder, but they refused so to find and returned a verdict of accidental death, which the coroner recorded and then sent Scorey to jail for murder. The court admitted Scorey to bail and granted a rule on the coroner to show cause why an information should not be granted against him. In Ripley's case (v) it was alleged that the coroner refused proof that the deceased was *non compos mentis* and the jury returned a verdict of *felo de se* (w). The court told the administratrix to take the inquest into the King's Bench and traverse it (x). In *King v. Stukley* (y) a man made his will just before he died. The other circumstances of the case were suspicious. The evidence was very strong that he killed himself, so the coroner took some of the jurymen off the jury, who then returned a verdict of *non compos mentis*. On these facts appearing the return was quashed and Holt, C. J., said the jurymen could not be removed after the jury was sworn (z). In Berkley's case (a) where the coroner refused to hear evidence that the person *felo de se* was in fact *non compos mentis*, he was reprimanded by the King's Bench and the inquisition was quashed. Hale says, (b) "but where it is known that one killed another the only evi-

(t) 2 Hale's Pleas of the Crown, 60; Umfreville's *Lex Coronatoris*, 204. The inference seems to be that if there was a man to be condemned to death it would be no part of the judges duty to hear evidence against the Crown.

(u) 1 Leach, 43 (1749), and see Jervis on Coroners, 284.

(v) 2 Jones, 198; 2 Shower, 199; Skinner, 45.

(w) By so doing the King got his forfeiture. It was not recorded how much thereby accrued to the coroner.

(x) See Alderman's Case, 2 Levinz, 152 s. c. *sub nom Rex v. Alderman*, 1 Ventris, 278, *sub non* Anonymous, Freeman, 419-433.

(y) 12 Modern, 423 (1702).

(z) Croke's Elizabeth, 371; Carthew, 72; 1 Ventris, 181; 1 Salkeld, 190; 3 Modern, 80-100-238; 1 Strange, 69.

(a) 2 Siderfen, 90-101-144 (1658), and see 2 Hale's Pleas of the Crown, 60.

(b) 2 Pleas of the Crown, 60.

dence to be heard is that for the king and the jury must bring it in murder even though it be an officer in the execution of his duty, for the defence will be made before the petit jury where the verdict will correct that of the coroners and thus it hath been commonly practiced in later years" (c). Yet he adds and we cannot but agree with him, "but it seemeth to me to be neither reasonable nor agreeable to law or ancient usage. It may do indeed for the grand jury but not for the coroners, for these reasons: because the coroner's inquest is to inquire truly (d) and is rather for the information of the truth of the fact as near as the jury can assert it and not for accusation; 2, because though the prisoner may be arraigned upon the coroner's inquest, if it find it murder or manslaughter (e), yet neither the court nor the prosecutor is concluded by it, but the bill of murder may be preferred to the grand inquest and upon that new presentment, the party may be arraigned and tried though the coroner's inquest arises only to manslaughter or it may be to *se defendo* or chance medley; 3. and accordingly the ancient practice hath been for the coroner's inquest to find the matter as they judge it was (f). Therefore, there is a difference in the statute of 1 and 2 Phillip and Mary, chapter 13 (g) between the provisions as to justices and as to coroners; the justices are directed to put down so much of the evidence as is material 'to prove felonies' while those words are omitted as to coroners."

(c) But it was for doing just this that the rule to show cause was granted in *King v. Scorey*, *supra*.

(d) Why should not this hold as to indictments before the grand jury; they are to inquire truly. See *Rex v. Dalton*, 2 Strange, 911 (1722); *Rex v. Magrath*, 2 Strange, 1242 (1746); 2 Burn's Justices, 43 (Edition of 1845). The inquisition of felony ought to be as certain as indictments, *Rex v. Clerk*, Holt, 167, nothing shall be taken by indictment in them, 1 Saunder's Reports, 356.

(e) The practice now is and long has been to take the indictment before the grand jury. These parallel proceedings seem at first blush a needless waste of time and money, but on second consideration it will be seen the purposes of the two inquisitions are totally different.

(f) Crompton's Justices, f 58; Holme's Case, 26 Elizabeth; Coke's Entries, 353b, and very often in the ancient iters of Edward II, and Edward III; 2 Hale's Pleas of the Crown, 61.

(g) (1554), 4 Statutes of the Realm, part 2, p. 250. See 2 Hale's Pleas of the Crown, 61.

In his note to Blackstone's remarks on this subject the late Chief Justice Coleridge says: "It seems probable that in ancient times the whole inquisition was taken with the body lying before the coroner and jury, or at least that the body was not buried till the inquisition was concluded. Now, however, it is sufficient if the coroner and jury have together a view of the body (such a view as enables them to ascertain whether there are any marks of violence on it or any appearance explanatory of the cause of death) and the latter are then sworn by the former in the presence of the body. These two, however, are indispensable conditions to the proceeding by the coroner (*h*)."

The statute of 1 & 2 Phillip and Mary, Chapter 13 (*i*) provides, "every coroner upon any inquisition before him found whereby any person or persons shall be indicted for murder or manslaughter, or as accessory or accessories to the same before the murder or manslaughter committed shall put in writing the effect of the evidence given to the jury before him, being material" and shall bind over the witnesses to the next gaol delivery and return the examination and recognizances with the inquisition on pain of being fined by the judge (*k*).

There is no requirement that the evidence shall be taken down, but the coroner shall take down the "effect of the evidence." According to East (*l*) the statute does not authorize him to take down the impression which the evidence made upon his mind, but the meaning of the witnesses. He need not, however, follow their exact words unless that is important (*m*).

It has been doubted whether the parties interested in the inquiry are entitled to the benefit of counsel before the coroner's inquest. In one case of *felo de se* the court of King's Bench quashed the inquisition because the coroner refused to admit counsel and witnesses on behalf of the

(*h*) *Regina v. Ferrand*, 3 B & A, 260.

(*i*) (1554), 4 Statutes of the Realm, part 2, p. 250.

(*k*) 40 shillings, 2 Hale's Pleas of the Crown, 64; 6 Viner's Abridgment, 246.

(*l*) 1 Pleas of the Crown, 384.

(*m*) Jervis on the Law of Coroners, 45.

administratrix (i). There is, however, no decision applicable to other inquiries before the coroner and the case alluded to proceeded upon the supposition that inquisitions of *felo de se* were not traversable, whereas it may be supported more properly upon another ground without reference to the admissibility of counsel, viz.: the rejection of evidence. It was admitted in the argument of the case of *Cox v. Coleridge* (k), that a party has the right to attend by counsel before the coroner's inquest. The point was not, however, noticed in the judgment of the court, but Mr. Justice Bayley observed incidentally that the right depended upon the question whether or no the inquest were traversable. But with great deference to so high an authority it would seem that the right can in no case depend on this criterion. The nature of the finding cannot be ascertained until all the witnesses are examined and the verdict returned, at which period it would be fruitless to allow or disallow the attendance of counsel.

"If this be correct the question of abstract right must be considered without reference to direct authority and it would seem in principle to be at most but doubtful. There is nothing in the position of counsel to except them from the power of exclusion vested in the coroner and if they are allowed there is no reason why any other advocate skilled in the law should not be permitted to be present at the coroner's proceedings. If any advocate has the right to be present *a fortiori* the party suspected (for there can be no accusation until the inquiry is terminated) may be present also and undoubtedly the coroner may, if he thinks fit, exclude even the persons suspected. If the party suspected or interested has a right to the assistance of counsel it is impossible to say that those in the opposite interest have not the equal right to have the presence and assistance of some legal adviser on their behalf, and if one may attend, why not several. If an advocate has a right to be present he may obtain such information as may tend to frustrate the administration

(i) Berkley's Case, 2 Sid., 90, 101.

(k) 1 B. & C. 37, 2 D. & R. 86.

of justice by knowing who the persons are who are likely to be accused and the evidence by which the accusation may be supported. The profession at the present day is too liberal, honorable and intelligent to furnish ground for objection on this score, but the bare possibility is sufficient to determine the question abstract right" (*n*). It is here worth while to note that in England, at that time certainly, a prisoner had no right to counsel before the magistrate and none before the coroner.

"It by no means follows as a consequence that their admission on some occasions would confer a right to be present at all" (*o*).

"If it be not left to the fair discretion of the coroner whether he will or will not admit counsel that privacy which is due, not only to the ends of justice, where the inquiry may terminate in accusation, but also in many cases to the feelings of the family of the deceased cannot be maintained. This exclusion may in some cases operate as a temporary grievance, but it is obviously a greater that the party suspected should be excluded, yet that may be done if the coroner think proper, and it is better that there should be some hardship suffered in the individual case than that the public should sustain a greater detriment.

"On the other hand it is obvious that there are many cases in which it may be expedient for the coroner to admit the presence of persons learned in the law. Wherever questions of doubt of difficulty may present themselves in the course of the inquiry, it is fitting that both the court and jury should have the benefit of the attendance of counsel, although coroners are in all cases presumed to be qualified to discharge their duties, should such cases occur. * * * In fine, the power of exclusion, even of the public generally, ought to be regulated by a due regard to the circumstances of each particular case and should, in no instance, be arbitrarily or improperly enforced" (*p*).

(*n*) Jervis on the Law of Coroners, 266.

(*o*) Jervis, 269.

(*p*) Jervis, 267.

Sect. 54. "It has been the subject of much controversy whether the inquiry before the coroner is of a public nature, for the purpose of ascertaining the cause of death merely and such as takes place in the ordinary courts of justice or on an inquest of office or whether it is merely an *ex parte* and secret proceeding analogous to that before grand juries and magistrates for the purpose of accusation which is admitted to be private (*q*).

"In support of the publicity of the proceedings it is urged first that the duties of the coroner and the obligations of the public towards him, show that the inquiry is public; secondly, that the individuals have interests with reference to the inquest which can only be exercised by a right of access, and lastly the *dicia* of learned judges are adduced to show that the proceedings should be open and public (*r*).

"In support of the first proposition it is contended that the inquiry before the coroner does not necessarily lead to accusation and that the probability of its so terminating is not a ground sufficient for saying that it should be secret.

"The statute of Marlbridge, Chapter 24 (*s*) is also cited as a legislative declaration that all persons of the age of twelve years ought to be present at an inquest for the death of a man. The former part of that chapter remedies the grievance before felt from amercements imposed upon townships because all persons of the age of twelve years did not attend the coroners inquest upon all occasions and provides that there shall be no amercement if a sufficient number of those summoned come to take the inquest, but it excepts expressly from that provision inquests for the death of a man, and therefore it is contended in those cases, all are bound to attend. How otherwise, it is said, can the inquiry be conducted with effect; for the coroner goes on the spot, where the inquiry is to be instituted knowing nothing of the occurrence or who may or who may not

(*q*) Cox v. Coleridge, 2 D. & R. 86, 1 B. & C. 37. This whole section is quoted from Jervis on Coroners whose discussion of the matter is too able to be improved upon.

(*r*) Britton, c. 1, Sect. 7, says the coroner shall not omit to cause the body to be openly viewed and by the inquest.

(*s*) 1 Statutes of the Realm, 25 (1267).

be able to testify to the circumstances of it. Sir T. Smith in his history of the Commonwealth (*t*) observes that 'the empanneling of the coroner's inquest and the view of the body is commonly in the street in an open place and in *corona populi*' and in an anonymous case (*u*) in which the court held that an inquisition of *felo de se* was traversable, Lord Hale distinguished it from a *fugum fecit* by observing that 'all the parties that were present at the death of the party are bound to attend the coroners inquest and upon their not appearing there is a flying in law which cannot be contradicted'.

"With reference to the second proposition it being admitted that the coroner must hear the evidence as well for as against the interest of the crown, how, it is said, can one who is not present tell what evidence is given to criminate him so as to be enabled to advance evidence in answer. Again a subject has a right to move to set aside an inquisition for irregularity; but of that he can have no knowledge unless he be present (*v*). The coroner's inquest partakes of the nature of other offices of entitling (*w*) at which the public have a right to be present, that right being secured by the statutes of escheators (*x*), which it is said are but declaratory of the common law. Although to a certain extent traversable, that does not preclude the right, for although an inquisition to find debts is also traversable a party interested has a right to be present and to cross-examine the witnesses (*y*), for irreparable injury may be done even though ultimately the inquisition may be traversed. It is not similar to proceedings before a magistrate or grand jury. There in the first instance a particular individual is accused; before the coroner there is no accusation, but the inquiry is to ascertain how the party came to

(*t*) See Jervis on Coroners, p. 96.

(*u*) Freeman's Reports, 419; see *Rex v. Aldenham*, 2 Levinz, 152 s. c., *sub non*, *Rex v. Alderman*, 1 Ventris, 278.

(*v*) 3 Modern, 80.

(*w*) *Rex v. Killinghall*, 1 Burroughs, 17, where the inquest was quashed because it was not "publicly and openly found." See *Hammond v. Howell*, 1 Modern, 814.

(*x*) 34 Edward III, c. 13; 36 Henry VI, c. 16; 1 Henry VIII, c. 8.

(*y*) 3 Price, 454.

his death. Grand Jurors are sworn to secrecy, by the oath of the coroners jury no such term is imposed. Depositions before grand juries are not evidence, those before the coroner are (*z*), which must be, because the party suspected or ultimately accused has the right to be present to cross-examine the witnesses.

"Thirdly, the dicta of modern judges are adduced to show that the proceedings are public. Mr. Justice Blackstone (*a*), speaking of a presentment of *fugam fecit* says, the reason given in some books why this inquest is not traversable like other inquests of office is because of the notoriety of the coroner's inquest *super visum corporis*, at which the inhabitants of all the neighboring villages are bound to attend and so the finding of flight is in effect recording the absence of the party, Lord Mansfield (*b*), likens it to other inquests of office which are open by express statutes, and Lord Kenyon (*c*) expressly says that the examination before the coroner is a transaction of notoriety to which every one has a right of access.

"However strong these authorities and arguments may at first sight appear, they do not upon examination establish a universal right for all the public to be present; but at most extend only to such as are summoned, suspected, interested in the result of the inquiry, or are inhabitants of the vill where the body is found dead.

"According to the best opinions, the coroner's inquisition is in no case conclusive and the inquiry is therefore preliminary only. It appears from the commentary of Lord Coke (*d*) upon the statute of Marlbridge that the occasion of that statute was the custom of coroners to summon many townships and sometimes a whole hundred where twelve persons should serve to make the inquiry, and if all did not attend, to present them before the justices in eyre when the whole township or hundred were amerced even

(*z*) Phil. & Arn Ev., 90; Kel. 55; Jon. 53; 1 Levinz, 180; Gilbert on Evidence, 124.

(*a*) 2 William Blackstone, 981.

(*b*) *Rex v. Killinghall*, 1 Burroughs, 17.

(*c*) 3 Term Reports, 722.

(*d*) 2 Coke's Institutes, 147.

though a sufficient number to make the inquiry did appear. It is true that inquests of death are excepted from this provision, but it would seem from the commentary that none were bound to appear even in these cases, but such as were summoned; and at most it can confer no right upon those who are not inhabitants of the vill. The ancient practice as stated by Sir T. Smith cannot decide the right; and the distinction taken by Lord Hale with reference to a *fugam fecit* may be correct even though the parties at the death may have no right personally to be present during the inquiry of the coroner, for they may be bound to attend to give evidence if called upon or to abide the result of the inquiry and yet not be entitled to be actually present in the room; notwithstanding the coroner, the presiding officer, may, in his discretion, direct their removal (e).

"It is clear that the coroner is bound to hear the evidence on both sides (f). This, it is presumed, is not to protect the interests of those who may be suspected or ultimately accused, but because the inquiry how the party came to his death cannot be truly satisfied unless all the witnesses who know anything of the death be examined. This will not confer the right of access on witnesses generally, contrary to the direction of the coroner, for it is the constant practice in the courts of justice, both in civil and criminal proceedings, to order the witnesses to leave the court and to examine each out of the hearing of the others, a mode best calculated to insure the truth. But how it is said can the depositions taken before the coroner be evidence

(e) It was undoubtedly a misdemeanor to obstruct the coroner, *Rex v. Solgard*, 2 Strange, 1097, s. c., Andrews, 231 (1738). See Owens, 122; Bracton, f 121; Fleta Lib. 1 c, 25, and 12 Jac. 1 B. R. Calth. Rep. MS. cited Umfreville's *Lex Coronatoris*, 217, and see Jervis on Coroners, 271 Lord Tenterden's *dictum* in *Garnett v. Ferrand*, 6 Barn & Cress, 611 and 6 Dowl & Ry. 657 (1826) is perhaps the most concise statement of the real situation, he says "it will be in many cases impossible that a proceeding should be conducted with due order and solemnity and with the effect that justice demands, if the presiding officer, whether he be judge, coroner, justice or sheriff, has not control of the proceedings and the power of admission or exclusion according to his own discretion. The power of exclusion is necessary to the due administration of justice." See also article, 11 Western Law Journal, 285.

(f) *Rex v. Scorey*, 1 Leach, 43 (1749); *Regina v. Colmer*, 9 Cox. C. C., 506.

unless the party against whom they are used be present and have the opportunity of cross-examining the witnesses. It must be admitted that ordinarily where there is no cross-examination, depositions are not admissible, but those taken before the coroner are, it is conceived an exception to this general rule. The coroner is an elective officer appointed on behalf of the public to make inquiry about the matter within his jurisdiction and therefore the law presumes that the depositions made before him will be fairly and impartially taken (*g*). In the case of *Rex v. Eriswell* (*h*) it was argued by Mr. Justice Buller that the examination of the pauper was admissible, and in answer to the objection that it was taken in the absence of the parties to be affected by it, he instanced the case of depositions taken before a coroner which were always evidence though the party was not present. There is, however, no reported case in which this point has been directly determined; the cases alluded to by Mr. Justice Buller (*i*), certainly do not support it. The practice has nevertheless been to admit such depositions without inquiring whether the party was or was not present, and notwithstanding the objection of counsel, they were received by Mr. Baron Hotham in the case of *Rex v. Purefoy* (*k*). It is true that the propriety of this distinction has been doubted by a very learned author who observes that there appears to be no satisfactory reason why a deposition should be received at the trial under circumstances which would render every other kind of judicial depositions inadmissible (*l*), it should, however, be observed as confirmatory of high credit which the law attaches to proceedings before the coroner that even before the late act (*m*) which directs the coroner to subscribe the depositions they were not evidence unless they were signed by the coroner (*n*).

(*g*) Buller's *Nisi Prius*, 238.

(*h*) 3 Term Reports, 713.

(*i*) 1 Levinz, 180; Kelyng, 55; Salkeld, 555.

(*k*) Maidstone Summer Assize, 1794; see Peake on Evidence, 64;
2 Phil. & Arn. on Evidence, 91.

(*l*) 2 Phil. & Arn. on Evidence, 110.

(*m*) 7 George IV, c 64, Sect. 4.

(*n*) 2 Leach, C. L., 770.

"There is, however, another argument adduced to show that the proceedings are public; for how it is said can irregularity be taken advantage of unless the party have a right to be present? It must be admitted that there are instances in which from the gross misconduct of the coroner or of the jury, inquisitions have been quashed, but there are none in which this course has been produced for a mere irregularity. The coroner is a public elective officer, sworn to discharge his duty faithfully; the jurors are also sworn to the just execution of their office and are not bound to secrecy, each is a mutual check upon the other, and it is almost impossible that gross misconduct should exist, without the means of bringing it before the court. But should such a case occur without the possibility of disclosure, it must be remembered that the inquiry is but preliminary and may be traversed; and the temporary interests of the private individuals must yield to the public good, if it be necessary for the ends of justice that the inquiry should be conducted in secrecy. Other inquests of office are undoubtedly open to the public and the parties interested have a right to cross-examine the witnesses, but such do not end in the possible accusation of any individual. There are indeed many inquiries before the coroner which ultimately do not affect the distinction; but that cannot legitimately be ascertained until the inquiry has terminated, at which period it is too late to allow or disallow the presence of the public.

"The statutes of escheators which were made in consequence of the misconduct of those officers and required in future their inquests should be taken publicly, do not in any degree affect the inquests of coroners. When Lord Mansfield spoke of express statutes, he probably alluded to these, for there are some applicable to coroners, and Lord Kenyon's dictum may be referred to the same source, viz.: a confounding of the statutory provisions relating to these inquests of office with coroners' inquisitions.

"It is obvious although the inquiry of the coroner is preliminary only, that it may and frequently does lead to an accusation. Such an inquiry ought, for the purposes of justice in some cases, to be conducted in secrecy. It may

be requisite that the party suspected should not in so early a stage be informed of the suspicion that may be entertained against him and of the evidence upon which that suspicion is founded, lest he should elude justice by flight, by tampering with the witnesses or by any other means. Accusation may begin at the moment when the evidence commences. Cases may also occur in which privacy may be requisite for the sake of decency, others in which it may be due to the family of the deceased. Many things may be disclosed to those who are to decide, the publication of which to the world at large would be productive of mischief, without any possibility of good. Even in cases in which absolute privacy may not be required, the exclusion of particular persons may be necessary and proper. Of the necessity of this privacy or exclusion the coroner is the judge. It is a power necessary to the due administration of justice, and it is impossible that the proceedings should be conducted with due order and solemnity and with the effect that justice demands if the presiding officer have not the control of the proceedings and the power of admission or exclusion according to his own discretion.

"For the fair and *bona fide* exercise of this discretion, no action can be maintained against the coroner (*o*). The court of the coroner is a court of record of which the coroner is judge, and it is a general rule, of great antiquity, that no action will lie against a judge of record for any matter done by him in the exercise of his judicial functions (*p*). This amenity from actions or questions at the suit of an individual, is given by the law to the judges not so much for the sake of the judges as for that of the public, that the judges being free from actions may be free in thought and independent in judgment. Were it otherwise no one would act at the peril of being harassed by a multiplicity of actions and of having his motives and reasons weighed and tried by juries at the suit of individuals who may be dissatisfied with his conduct. There are few who would not

(*o*) *Garnett v. Ferrand*, 6 B. & C., 611.

(*p*) *Floyd v. Baker*, 12 Coke's Reports, 23 (1608); 1 Lord Raymond, 451; 1 Modern, 184; *Thomas v. Churton*, 2 B. & Smith, 475 s. c. 8 Jurist New Series, 795.

prefer rather to admit disorder and confusion and all the evil consequences that would follow from the indiscriminate admission of those who might choose to intrude, than to place themselves in a situation of so great jeopardy. It is not to be presumed that those who are selected for the administration of justice will make an ill use of authority vested in them. In the imperfection of human nature, it is better even that an individual should occasionally suffer a wrong than that the general course of justice should be impeded and fettered by constant and perpetual restraint and apprehensions on the part of those who are to administer it. Corruption, misconduct or neglect of duty are quite a different consideration; for these there is a due course of punishment by criminal prosecution (*q*).

"Whatever, therefore, may have formerly been the question of right is it clear from the late decision (*r*), the coroner has the power of excluding not only particular individuals, but the public generally. It is, nevertheless, obvious that in many cases publicity assists not only the investigation of the truth but the detection of guilt, and, therefore, this power ought not, without great cause and due consideration, to be enforced.

"A question has arisen and was noted in a recent case (*s*) as to the right of a coroner to have a person, who is in custody, charged with homicide in respect of which an inquest is being taken, brought before him for the purpose of identification by the witnesses to be examined on such inquest. In that case an application was made to the court of Queen's Bench at the instance of the coroner for a writ of *habeas corpus* to remove the body of a man who stood committed to the custody of the Governor of Newgate upon a charge of murder and to bring him before the coroner and a jury of the county of Middlesex on an inquest on the body of the deceased in order to be identified by certain witnesses. The court, apparently not entertaining grave doubt of their power to issue the writ declined so to do in this par-

(*q*) Per Lord Tenterden, 6 B. & C., 626.

(*r*) Garnett v. Ferrand, 6 B. & C., 611.

(*s*) *In re Cook*, 7 Q. B., 653.

ticular case on the ground that no necessity for it existed, it not being shown that the identification could not be affected without producing the prisoner. Lord Denman said: 'I have the greatest respect for the office of coroner and I have always entertained the highest opinion of the services rendered by that office in preserving the lives of the subjects of her Majesty. We ought not, however, to exercise our power of interference supposing such power to exist except under a due sense of the danger that may ensue from taking a man out of custody to which he has been committed upon so grave a charge as that upon which the present party is confined. Nevertheless, if the jury could not otherwise go on with their inquiry, I should consider anxiously the course which this court ought to pursue for the purpose of assisting an inferior tribunal, but here I see no difficulty in the party being identified on the same evidence by which he was identified when he appeared before the committing magistrates' and Mr. Justice Williams observed, 'no case of inconvenience has existed in the coroner's court for centuries by reason of no such writ having been granted; consequently I do not see the weight of the argument as to inconvenience which will arise from our refusing to grant this writ now. No inconvenience can arise from a person going to Newgate to see the party there, but there is great inconvenience in letting a party in custody out of the close walls of a prison' " (1).

SECT. 55. It is not purposed to go into the law of deodand to any extent whatever. With the intricacies of the law upon this subject we are in no way concerned. We are concerned, however, with the coroner's inquisition concerning deodands and forfeitures. Wheresoever the inquest found murder it was the duty of the coroner to further inquire into the goods and chattels and lands of the person found culpable, these were to be valued by the jury and turned over to the vill to keep on pain of amercement and delivered over by the town to the justices in eyre (u).

(1) This whole section is quoted from Jervis on Coroners, p. 240, *et seq.* From it all, Stephen concludes "the coroner may exclude all persons from his inquest if he thinks desirable for the purpose of justice and decency" Digest of Criminal Procedure, 219.

(u) See Statute 4 Edward I, 1 Statutes of the Realm, 40.

So where death had been caused by felony or misadventure the deodand was to be inquired of, and having been valued and enrolled, was to be delivered over to the vill to keep until the coming of the justices (*v*). The deodand was the personal chattel which when the immediate cause moving to the death of a reasonable being was forfeited to the king (*w*). It must be in motion or there is no deodand if it were affixed to the freehold it was not a deodand (*x*) but into the intricacies of this most intricate of all law, it is not profitable to pursue inquiry further.

Sect. 56. Britton tells us (*y*) "of every inquest taken on the view of the body of a person feloniously killed let the coroner summon a parent of the deceased or more on the part of the father or mother to appear before him to prove Englisheria (*z*) (*i. e.* that the deceased was of English extraction and not a foreigner) according to the usage of the country and record their names" (*a*).

(*v*) See Britton, Chapter 1, where there is a lengthy discussion of this topic.

(*w*) Burn's Case, 5 Pa. C. C. R., 549 (1888).

(*x*) 4 Justices of the Peace, 536 (English).

(*y*) Britton, c 1, Sect. 35.

(*z*) Bracton II, p. 391; Fleta, c 30, Pleas of Gloucester, 57.

(*a*) Fleta, c. 30.

CHAPTER VII.

THE EFFECT OF THE INQUEST AND THE RETURN.

Sect. 57. When no further evidence could be produced the coroner drew up the inquisition and he and the jurors set their hands and seals to it (*b*). This done, the inquest was over, a second could not be held unless and until the first was disposed of. If the culpable one was present he was seized and thrust into jail (*c*). If he was not present, the coroner could issue a warrant to the sheriff to apprehend him (*d*).

The coroner of a franchise had power to "make process within the franchise to the sheriff, vide the case of Ely, 29 Edward III, 41 b., *quare* how the usage is there viz.: whether the judge makes out process of the liberty and to whom" (*e*). The witnesses or first finders should be bound over to appear at the next gaol delivery and their names should be enrolled together with those of their sureties (*f*). The coroner then issued a warrant to have the body buried (*g*). If the person had been *felo de se* the warrant is supposed to have been that the body be buried in some public street or highway (*h*). Driving a stake through the body says Umfreville (*i*) is a practice that hath no countenance from the coroner's warrant though it may serve to make the ignominy more notorious (*k*). The

(*b*) 22 Assize, 94. As late as 1840 it was held in *Regina v. Stockdale*, 8 Dowl. P. C., 516, that where several of the jury were marksmen and their marks were not attested the inquest should be quashed. Overruling *Lewen's Case*, 2 Lewin C. C., 125 (1834) where it was held that several of the jury being marksmen those who were not might be attesting witnesses to those who were.

(*c*) Bracton, f 121b; 4 Edward I, 1 Statutes of the Realm, 40; Fleta, Book I, cap. 25, Sect. 5.

(*d*) Britton, c 1, Sect. 17; Chitty Criminal Law, 164; Jervis on Coroners, 46.

(*f*) Bracton, f 121b; 4 Edward I, 1 Statutes of the Realm, 40.

(*f*) Bracton, f 121b; 4 Edward I, 1 Statutes of the Realm, 29.

(*g*) Britton, c 1, Sect. 7; Fleta Lib. I, cap. 25, Sect. 8.

(*h*) Umfreville Lex Coronatoris, 8.

(*i*) Umfreville, it must be remembered was himself a coroner.

(*k*) Umfreville Lex Coronatoris, 9.

coroner's duties did not end there. Under the statute of Marlbridge, chapter 13 (*l*), it is necessary that he should turn in all his inquests (returns) to the justices in eyre by a certain day, when the felon must be there or at least on the next day assigned (*m*). This was altered by the statute of third Henry VII which provides that the coroner must seal and certify his inquisition into the next gaol delivery or into the Court of King's Bench under pain of £5 (*n*). If the coroner refuse or neglect to return the inquisition, *certiorari* is the proper method to force a return or to remove it into the King's Bench or Chancery (*o*). By the statute of 1 & 2 Phillip & Mary, chapter 13, (*p*) as we have seen (*q*) where the inquisition finds murder or manslaughter, the coroner ought to put the effect of the evidence "being material" into writing and return it with the inquisition and the recognizances of the witnesses he has bound over to appear at the next gaol delivery (*r*). But if the return is *felo de se* he is not obliged to return the depositions (*s*). Although Blackstone tells us that he "must certify the whole of his inquisition (under his own seal and the seals of his jurors together with the evidence thereon) to the Court of King's Bench or the next assizes" (*t*), it is hardly correct to say that the evidence should be returned in cases not within the statute of Phillip & Mary. The coroner of the admiralty returns his inquisitions before the commissioners in admiralty; the coroner of

(*l*) 1267, 1 Statutes of the Realm, 23.

(*m*) *Ibid.*

(*n*) See 2 Statutes of the Realm, 510 (1487) and see 1 Hale's Pleas of the Crown, 418. In Lord Buckhurst's Case, 1 Keble, 280 fol. 81, where murder was found, the coroner kept the inquest in his pocket instead of returning it. He was discharged and fined £100.

(*o*) Staundeford's Pleas of the Crown, 64; Hale's Summary, 171; 2 Coke's Institutes, 176. The fact that the inquisition was taken after the *certiorari* tested did not vitiate it. Anonymous, 2 Lord Raymond, 1305 (1710).

(*p*) 4 Statutes of the Realm, Part II, p. 250 (1554).

(*q*) *Ante*, Sect. 53.

(*r*) Or Assize.

(*s*) *Rex v. Sutton*, Strange, 1073.

(*t*) 1 Commentaries, 349, citing 33 Henry VIII, c 12; 1 Philip & Mary, c 13; 2 West Symbol, Sect. 310; Compton, 264; Tremains Pleas of the Crown, 621; Lord Hale says the county coroner returns his inquisitions before the commissioners of gaol delivery, 2 Pleas of the Crown, 54.

the verge before the lord master or lord steward of the Household (*u*); the coroner of a franchise before the judge of gaol delivery in the franchise (*v*).

The return thus made had in cases of felony the effect of an indictment (*w*) and could be pleaded to in the same way (*x*). Thereon the party might be tried without the intervention of a grand jury (*y*). We may, therefore, expect that the inquest must be drawn up with great precision and such was the case. Umfreville tells us "the ancient form or mode of inquest is not as I can find anywhere publickly (*sic*) or directly given to show us, other than by implications" (*z*). The coroner was held to all the preciseness of an indictment for felony (*a*). He must subscribe his official title to the inquest (*b*). If he was lord of a franchise he must in his return style himself "coroner" or his inquisition was void, *a fortiori* if he was only coroner for a lord of a franchise (*c*) and so when Lord Berkley's coroner neglected to state how Lord Berkley came to make him coroner (*d*), the return was quashed (*e*). The caption must not only name the coroner as such, but the date and year of the king's reign must be set forth (*f*) and the year of our Lord must be stated and in Ro-

(*u*) 2 Hale's Pleas of the Crown, 54, citing 33 Henry VIII, c 12, Sect. 3; 28 Henry VIII, c 15.

(*v*) 2 Hale's Pleas of the Crown, 68.

(*w*) 1 Chitty on Criminal Law, 163; Jervis on Coroners, 326.

(*x*) Jervis on the Law of Coroners, 326. If both the grand jury and inquest find him guilty he must be arraigned on the inquest and plead *anteforis acquit* or he will be liable to be outlawed on the inquest, 2 Hale's Pleas of the Crown, 65. But if both are exactly alike he may be arraigned and tried on both at once, *Ibid*.

(*y*) 3 Campbell, 371; 1 Salkeld, 382; 2 Leach, 1095.

(*z*) Lex Coronatoris XXXI, and we would agree with him had not Jervis in Chapter X, p. 273, given us such an excellent form (see appendix). There is also an inquest set forth at length in Long's Case, 5 Coke's Reports, 120a (1605).

(*a*) Queen *v.* Clerk, 1 Salkeld, 377 (1702).

(*b*) Schrogs *v.* Spencer, Moore, 548, pl. 734 (1675).

(*c*) 22 Edward IV, 12.

(*d*) Where in law, Lord Berkley's power to create a coroner came from.

(*e*) Pinner's Case, Croke's Elizabeth, 31 pl. 4 (1548); Dearing's Case, Croke's Elizabeth, 193 pl. 7.

(*f*) King *v.* Heatherfall, 3 Modern, 80 (1685) and see 1 Salkeld 90; 12 Modern, 496; 2 Jones, 198; Carthew, 72; 2 Levinz, 141-152.

man numerals (*g*). This must be very carefully done for the caption, it was thought, was not amendable (*h*). The place where holden must appear (*i*), for if the inquisition set forth no place it was insufficient (*k*), or if it did not show a place within the coroner's jurisdiction (*l*). The return must show the date with exactness, for if it were held on Sunday it was void (*m*). The nature of the death should be most particularly set forth (*n*). If by wound, the place, length and depth of the wound should be mentioned (*o*), and whether there was one or more than one wound and by what weapon it was made, and who did the wounding (*p*) and that the wound was fatal (*q*). It should be specifically stated by whom the crime was committed (*r*), if the person was unknown, he was called John-a-Noke (*s*), or it was said the person was unknown. The return must specify the names of jurors (*t*) and that

(*g*) And where it was in common figures the return was quashed. *Rex v. Phillips*, 1 *Strange*, 261 (1720).

(*h*) Anonymous, *Comberback*, 70.

(*i*) *Pinner's Case*, *Croke's Elizabeth*, 31 pl. 4 (1584), where A being coroner of Ludlow only "*cepit inquisitionem super visum corporis infra metas et hundredas comital*" it was held void, and see *King v. Cross*, *Keble*, 744 (1664), and 2 *Hale's Pleas of the Crown*, 66.

(*k*) Anonymous, 2 *Lord Raymond*, 1305 (1710), and See *Dyer*, 69.

(*l*) *Thorney's Case*, *Croke's James*, 276 (1612). But where it was set forth to have been held at B, before J. S. coroner of the King's liberty of B it need not be set forth that B is within the said liberty for that cannot but be intended, *Long's Case*, 5 *Coke's Reports*, 120b (1605).

(*m*) *King v. Bunney*, 2 *Saunders*, 291. See *Jervis on Coroners*, 279.

(*n*) *King v. Solway*, 3 *Modern*, 100 pl. 61 (1686). Anonymous, 12 *Modern*, 112 (1697) thus where the jury found a post in the road was one of the causes of the death, the inquest was quashed for uncertainty.

(*o*) 2 *Hale's Pleas of the Crown*, 58.

(*p*) 4 *Edward I*, 1 *Statutes of the Realm*, 40.

(*q*) *Queen v. Clerk*, 1 *Salkeld*, 377 (1702); *King v. Parker*, 2 *Levinz*, 141; *Stanlack's Case*, 1 *Ventris*, 181 s. c.; 1 *Modern*, 671 (1675); Anonymous, 1 *Ventris*, 352 (1680).

(*r*) In *Regina v. Stockdale*, 8 *Dowl. P. C.*, 516 (1840), an inquest was held bad for not so stating.

(*s*) 2 *Hale's Pleas of the Crown*, 64-65.

(*t*) *Pinner's Case*, *Croke's Elizabeth*, 31 pl. 4 (1584); *Fitzherbert's Abridgment Title Coroners*, 107; *Staundeford's Pleas of the Crown*, 51; 2 *Hawkins's Pleas of the Crown*, 77.

they were good and lawful men (*u*). But it was not necessary to state that they were of the four next villis (*v*), for that the court intended (*w*). Hawkins doubts this for he says it is a material part of the inquest and no material part of an indictment (for an inquest is an indictment) will be intended; though he acknowledges that the authorities are against his view (*x*). The return must state that the jurors were sworn (*y*). It ought also to contain the names of all witnesses or parties let by mainprize to the next assize (or goal delivery) and of their pledges (*z*). In some cases technical words were required, thus, where there was a verdict of *felo de se* the omission of the words "*per cussit*" has been held fatal (*a*). "*Sic seipsum murdravit*" has also been held essential (*b*), but there are instances where they have been omitted (*c*). In *Regina v. Clerk* (*d*) it was said that the word "*murdravit*" was not necessary, and

(*u*) Lord Coke has said they need not be described as good and lawful men for they are presumed to be so until proved otherwise, see 4 Justices of the Peace (Eng.) 535. But in *Earl of Berkshire's Case*, Palmer, 252 (1623), where the coroner omitted the words *probum et legalum hominum*, the return was quashed for they might have been villeins. See *Francis Oily's Case*, Croke's James, 635, pl. 2 (1623), and in *Withipole's Case*, Jones, 198-9 s. c.; Croke's Charles, 134, Ley. 81 (1628) two of the jury were outlaws and the return was quashed.

(*v*) *King v. Cross*, Keble, 744 (1664) to say that they were lawful men without saying that they were of the next town is sufficient so that it appears by what jurors it was taken. 1 Siderfen, 204, 1 Keble, 416-723-727-744, *contra*, Latch, 166; Popham, 210; Coke's Book of Entries, 354; Pinner's Case, Croke's Elizabeth, 31 (1584); 1 Hale's Pleas of the Crown, 416; 2 Hawkins's Pleas of the Crown, c 9, Sect. 22; Poph. 210, being good before the statute it is still good, 2 Hawkins's Pleas of the Crown, c 9, Sect. 22. But in *Anonymous*, 2 Lord Raymond, 1305 (1710), the inquest was quashed because it was "*per sacramentum duodecim* and does not say *proborum et legalum hominum* nor for what plea."

(*w*) *Berkley's Case*, 2 Siderfen, 90-101-144 (1658), and see 1 Hale's Pleas of the Crown, 416.

(*x*) 2 Hawkins's Pleas of the Crown, c 9, Sect. 22.

(*y*) Pinner's Case, Croke's Elizabeth, 31 (1584); 2 Hawkins's Pleas of the Crown, c 9, Sect. 22; 1 Siderfen, 204; Keble, 727, 744, *contra*, Latch, 166; Popham, 210; Coke's Entries, 354.

(*z*) 22 Assize, 94; 4 Edward I, and see 3 Henry VII.

(*a*) Palmer, 252; Croke's James, 635.

(*b*) *Per Twisden, J.*, 1 Siderfen, 204; *per Holt, C. J.*, in *Queen v. Clerk*, 1 Salkeld, 377 (1702); Plowden, 255; 1 Saunders, 256.

(*c*) 1 Keble, 66; 7 Modern, 16, but see *Queen v. Clerk*, 1 Salkeld, 377 (1702), yet it has been said if the finding is correct in substance though defective in form it may be amended, *King v. Harrison*, 1 Siderfen, 255-259; 3 Modern, 101.

(*d*) (1702) 1 Salkeld, 377.

that the inquisition might stand as an indictment for manslaughter. It is to be noted that that was a case where the jury found "*Clerk cum cultro jugulum suum voluntarie & felonice & ut felo de se & seipsum murdravit*" (*dd*). The inquest was sought to be quashed on two grounds. Concerning the second, it was said *per cur*. "The inquisition is good without the word *murdravit* for it is, as an indictment, a finding of manslaughter, and so it was held in Dame Hale's case." We have an authority for the proposition that the inquest may be amended in all points, but the verdict, provided it be done in open court (*e*). It was said more recently that if the finding were correct in substance, though defective in form it might be amended (*f*), and yet it must be remembered that it had been held the caption could not be amended (*g*), and a variance between the name of a juror in the caption and the name the juror signed had been held fatal (*h*). It is difficult to see the reason for saying that the return is amendable for it is not within the statute of *jeofails* (*i*), but it must be remembered that where an inquest would have been good before the statute of 4 Edward I, it is still good (*k*).

Once the inquest was filed no *melius inquirendum* (*l*) could be awarded until the inquest was quashed (*m*). If the inquest be quashed because of a *male se gessit*, a *melius inquirendum* should be awarded (*n*) and the new inquest so directed to be taken should be taken by the

(*dd*) This is evidently a misprint for "*uccidit*."

(*e*) *King v. Harrison*, 1 Siderfen, 255; pl. 18, and see 1 Siderfen, 259.

(*f*) *King v. Solway*, 3 Modern, 101 (1686).

(*g*) Anonymous, Comberback, 70.

(*h*) 4 Justices of the Peace (Eng.), 519.

(*i*) Jervis, p. 273.

(*k*) 2 Hawkins's Pleas of the Crown, c 9, Sect. 22.

(*l*) A writ which issued after an imperfect inquisition by the coroner commanding the sheriff or commissioners to summon another inquest in order to more correctly ascertain, etc.

(*m*) *King v. Stanlake*, 2 Keble, 859 (1671) if the inquest is defective it should be quashed by the court before which the party is arraigned, but this should be done before plea, *Bunny's Case*, Carthew, 72.

(*n*) *Croke's Elizabeth*, 371; 3 Keble, 800-855; Salkeld, 190; Cathew, 72; 1 Ventris, 181-352; 3 Modern, 80-100-238; *contra*, 2 Jones, 198.

sheriff or justices or by special commissioners (*o*), but if it was quashed for any other reason, the coroner simply took another inquest *super visum corporis* (*p*).

In order that a *melius inquirendum* should be granted it must appear that the coroner was corrupt in taking the inquest. Thus, if one be found by the coroner to be dead *per infortunium* and it is suggested to the Court of King's Bench that he was in fact *felo de se* a *melius inquirendum* should not issue, the coroner is the proper person to take the new inquest (*q*). So where the deceased was *felo de se* and the coroner's inquest found him a lunatic, Mr. Jones moved for a *melius inquirendum*, but it was denied because there was no defect in the inquisition, but the court told him that if he could produce an affidavit that the jury did not go according to the evidence or of any indirect proceedings by the coroner, they would grant it (*r*). In *King v. Aldenham* (*s*), A committed suicide and the jury were going to bring him in *non compos mentis*, but the coroner adjourned them from time to time, until they came to his idea and found it *felo de se*, it was moved three times to set the inquest aside for practice (*t*), but Hale, C. J., said the executors might traverse the inquest (*u*) and refused the *melius in-*

(*o*) 2 Hale's Pleas of the Crown, 59-69; 2 Rolle's Abridgment, 23; 21 Edward IV, 70b; 1 Salkeld, 190; 2 Siderfen, 204; Strange, 69; 1 Hale's Pleas of the Crown, 415; 2 Hawkins's Pleas of the Crown, c 9, Sect. 56.

(*p*) Croke's Elizabeth, 371; 3 Keble, 800-856; 1 Modern, 82; 1 Salkeld, 190; 1 Ventris, 181-352; 3 Modern, 80-100-238; *contra*, 2 Jones, 198, or has committed a misdemeanor, 1 Ventris, 182-352, *King v. Hetherfall*, 3 Modern, 80-238 (1685); 2 Jones, 198; Carthew, 72. "Undue practice" was long considered sufficient ground for a *melius inquirendum*, Anonymous, 1 Ventris, 352 (1680). See 3 Modern, 80; 1 Salkeld, 190; 12 Modern, 493, but a *melius inquirendum* granted because the fact that the deceased was *felo de se* had been suggested to the King's Bench was held void, 2 Anderson, 204, and the whole doctrine was questioned in *King v. Wakefield*, 1 Strange, 69 (1718), because the practice could not appear on the record.

(*q*) Aurlstone's Case, Fitzherbert's Natura Brevium, 144, 250, though *contra*, Croke's Elizabeth n. 13.

(*r*) *King v. Hetherfall*, 3 Modern, 80 (1685), and see *King v. Bunney*, 1 Salkeld, 190; Carthew, 72 (1689); 12 Modern, 496; 2 Jones, 198; 1 Ventris, 181, and see Strange, 22-167-533, 2 Levinz, 141; Croke's Elizabeth, 371; 3 Keble, 800; 2 Strange, 1073, 1097.

(*s*) 2 Levinz 152 (1675) s. c., *sub nom Rex v. Alderman*, 1 Ventris, 278; *sub nom Anonymous*, Freeman, 419-443.

(*t*) The coroner received £8.

(*u*) It is hard to see how this can be for a *felo de se* can have neither executors nor administrators, *King v. Warrington*, 1 Salkeld, 152 pl. 2 (1692).

quirendum. In Stanlack's case (*v*) the inquisition found that the deceased came to his end from a meagrim (head-ache) at Greenwich. Sir Edward Thurland moved for a *melius inquirendum* producing several affidavits to the effect "that Stanlack was riding in the highway and a coach with six horses, rushing by him, cast him from his horse and killed him, and that drivers offered to prove this before the coroner and he would not hear them." The court said that where practice was proved on the part of the coroner a *melius inquirendum* might issue and in this case thought the misdemeanor of the coroner should have been more clearly set out. In *Rex v. Wakefield* (*w*) where it fully appeared that the deceased was a lunatic, but the coroner for the purpose of securing the forfeiture told the jury to bring in a verdict of *felo de se*, for it was the same as *non compos mentis*, they found *felo de se*; hearing of the consequence the jury came to the coroner and told him they were satisfied the man was a lunatic, the coroner drew up a new inquisition and the jury set their hands to it, but on a *certiorari* being taken the coroner returned the first inquest. The court stayed the filing of it and committed the coroner. In *King v. Ripley* (*x*) it appeared that the Lord of the Manor had used practice to have a return of *felo de se* made but the court directed that the administrator should traverse the return.

In *King v. Solway* (*y*) the deceased had drowned himself and the inquest found him *non compos mentis* because it is more generally supposed that a man in his senses would not be *felo de se*, but a *melius inquirendum* was refused (*z*). In *King v. Atkinson* (*a*) the court went so far as to say that where the coroner had been indicted for malpractice the quashing of the return and the grant of the *melius* should be stayed until the determination of the indictment.

(*v*) 1 Ventris, 181 (1671) s. c.; 1 Modern, 82.

(*w*) 1 Strange, 69 (1718).

(*x*) Skinner, 45 pl. 16; 2 Jones, 198 (1680).

(*y*) 3 Modern, 100 pl. 61 (1683).

(*z*) See 2 Levinz, 140; 1 Sid. 225, 259; 1 Salkeld, 377.

(*a*) 12 Modern, 496 (1702).

There is some doubt as to what was done if the jury misbehaved. The case of *King v. Heathershall* (b) seems to say there should be a *melius inquirendum*. If they found facts totally unwarranted by the evidence this seems to be so (c). But upon a surmise that the coroner ought to have found the deceased *felo de se* and has not, the court would refuse a *melius inquirendum*. But this was often denied, for it was claimed to be within the statute of 28 Edward III, chapter 9 (d). Yet it has been held that if the coroner omit to find the goods of a *felo de se*, there may be a *melius inquirendum* (e) or even if he find them erroneously (f). But there could be no *melius inquirendum* awarded on the statute of 34 Edward III, chapter 14.

Sect. 58. Hawkins heads the thirty-third section of the ninth chapter of his *Pleas of the Crown* "what high credit the law gives to an inquisition death before a coroner" (g). Anciently the verdict had more weight than at present and judges would not receive a verdict acquitting a person found guilty by the coroner's jury unless the petit jury found the person did the fact but was not guilty for other reasons or unless they found by what other means the party came to his death (h). But this opinion became obsolete (i). It is agreed that the judges cannot compel a jury to make such a further inquiry on acquittal of a defendant from any other indictment "because it doth not in such manner appear of record by any such inquisition that a person is dead." It seems hard to reconcile the practice of compelling a jury to find such further matter with reason in any case

(b) 3 Modern, 80 (1685).

(c) *The King v. The Coroner*, Comberback, 2 (1686). But this hardly seems fair to the coroner as he must accept their findings, *ante*, Sect. 52.

(d) See *King v. Heathershall*, 3 Modern, 80 (1680) and 2 Hale's *Pleas of the Crown*, 59.

(e) 1 Hale's *Pleas of the Crown*, 415.

(f) *Palmer v. Humphrey*, Croke's *Elizabeth*, 584, pl. 13.

(g) See Staundeford's *Pleas of the Crown*, Book 2, cap. 52.

(h) 13 Edward IV, 3 pl. 7; 37 Assize 13; 11 Henry IV, 93; 14 Henry VII, 2b Fitzherbert, *Coroners*, 213; Staundeford's *Pleas of the Crown*, 181, and Book 2, cap. 52; 2 Hale's *Pleas of the Crown*, 301; Finch, 415; Brooke's *Abridgment Title Appeal*, 42, 112, *Ibid Title Indictment*, 10, 35; *Ibid Title Coroners*, 32-39-52-117. 2 Hawkins's *Pleas of the Crown*, c. 9, Sect. 33.

(i) 2 Hawkins's *Pleas of the Crown*, c. 9, Sect. 33.

unless it appear in the course of the evidence by what other means not mentioned in the indictment (or inquisition) the party lost his life (*k*). On first blush it would seem if there was any evidence on which an acquittal could be based there must be some on which to rest the further finding, but on putting the case of a pure *alibi* the mirage disappears. Chitty says (*l*) the finding of a grand jury is of more weight than that of the coroner; the reason which he gives, however, is wholly inadequate. He says it is because the court will at discretion bail after return of murder by the coroner's inquest, but never after the same return by a grand jury, but the reason of that is simply that in the former case the court has before it the evidence upon which the finding was based, but not in the latter case. In *Rex v. Dalton* (*m*) a boy had the misfortune to kill his schoolfellow and the coroner's jury found it murder. *Habeas corpus* was brought and the boy was taken before Lord Raymond at his home. The chief justice, after examining the depositions before the coroner admitted the boy to bail saying the depositions were a guide to the court's discretion and he himself had refused bail to Mr. Clifton, although the verdict was only manslaughter, for the depositions made it out murder. However, it now "appears from the best authors that the inquests of the coroner are in no case conclusive and that one affected by them either collaterally or otherwise may deny their authority and put them in issue" (*n*). The only verdicts upon which any doubt has been entertained are those of flight and *felo de se* (*o*). It is probably still true, however, that an inquisition which acquits a man cannot be traversed (*p*), that is to say, the king

(*k*) 2 Hawkins's Pleas of the Crown, c. 9, Sect. 33.

(*l*) 1 Criminal Law, 164.

(*m*) 2 Strange, 911 (1722), and see *Rex v. Magrath*, 2 Strange, 1242 (1746).

(*n*) 3 Keb., 489.

(*o*) Jervis on Coroners, 318.

(*p*) Anonymous, 1 Ventris, 239 "but it is agreed that no inquisition can be traversed to make a man *felo de se* who is found not to be so. So if they find him *non compos mentis* neither the crown nor its grantee can traverse it." 1 East's Pleas of the Crown, 389; Anonymous, 1 Ventris, 239; Foster's Criminal Law, 266. If the inquest which acquits cannot be traversed parallel proceedings can be taken before the grand jury.

never traverses (*q*). High credit was given to the findings "*felo de se*" and "*fungam fecit*" (*r*). Occasionally we find authority to the effect that "the coroner's inquest is conclusive" (*s*), and by the weight of authority *fungam fecit* is not traversable (*t*). This doctrine rests on a dictum in 8 Edward IV quoted by Hale and Staundeford, but there appears to be no instance in which the court has acted upon it (*u*). The reason which is usually given to prove that the finding of *fugam fecit* is not traversable is that all persons of the neighboring towns are bound to attend, from twelve years old and upward so that unless the suspect has fled he must be present (*v*). There is much authority for the proposition that the finding of *felo de se* is not traversable (*w*), but the better opinion seems to be that it is (*x*). As to the finding of *fugam fecit* the question still remains how can it be final, taken as it is in the absence of the party (*y*). Indeed, upon principle there is

(*q*) King *v. Storke*, 2 Keble, 800 (1679); Anonymous, 1 Ventris, 239.

(*r*) 2 Hawkins's Pleas of the Crown, c 9, Sect. 34, as to the conclusiveness of *felo de se*, see 1 Hale's Pleas of the Crown, 417.

(*s*) Rex *v. Parker*, 3 Keble, 489; 2 Levinz, 140, but see *contra*, 2 Hale's Pleas of the Crown, 60.

(*t*) Fitzherbert's Abridgment Title Coroners, 151; 8 Edward IV, 4; 2 Levinz, 141; Brooke's Abridgment Title Traverse, *sans clo* 229, 3 Keble, 564-6; 1 Hale's Pleas of the Crown, 363, 414-5-7; 2 Hale's Pleas of the Crown, 63-64, 301; King *v. Parker*, 2 Levinz, 141 (1675); Anonymous, 1 Ventris, 239, 278, 352; Brooke's Abridgment Title Coroners, 151; Title Traverse, 229; Hale's Summary, 170; 2 Hawkins's Pleas of the Crown, c 9, Sect. 54; Popham, 209; 1 Rolle's Reports, 217; 2 Siderfen, 90, *contra* 2 Siderfen 101.

(*u*) See Hale's remarks, 1 Pleas of the Crown, 417.

(*v*) 2 Coke's Institutes, 147-8; 3 Keble, 566; 1 Hale's Pleas of the Crown, 363, and see 3 Coke's Institutes, 55; 2 Levinz, 141; Hale's Summary, 29; 1 Ventris, 181-2; 2 Hawkins's Pleas of the Crown, c 9, Sect. 54, and 1 Hale's Pleas of the Crown, 417.

(*w*) Some say that no inquest finding *felo de se* may be traversed, 8 Edward IV, 4b; 1 Hawkins's Pleas of the Crown, c 9, Sect. 11 and cases there cited, Brooke's Abridgment Title Coroners, 151; King *v. Parker*, 2 Levinz, 141 (1675); 2 Levinz, 152; 2 Keble, 859; 2 Siderfen, 90-101-144; 2 Jones, 198, 1 Ventris, 278; 3 Keble, 564-566-604-800 Skinner, 45 pl. 16; Coke's Pleas of the Crown, 55; Staundeford's Pleas of the Crown, c. 52, but see cases cited in Rex *v. Roupel*, Cowper, 458, and Rex *v. Heaton*, 2 Durnford and East, 184.

(*x*) 8 Edward IV, 4; 45 Edward III, reported 1 Hale's Pleas of the Crown, 417; King *v. Aldenham*, 3 Keble, 564, 566 (1675), where Hale said no inquest was not traversable but *fugam fecit* and that by estoppel and see 2 Hawkins's Pleas of the Crown, c 9, Sect. 55.

(*y*) Yet an ordinary judgment by default is final.

no reason why *fugam fecit* found by the coroner is not as traversable as any other inquisition and the doubt in this respect rests on no better foundation than the dictum before alluded to (*z*).

Lord Coke is of opinion that an inquisition of *felo de se* taken before the coroner *super visum corporis* is not traversable and is conclusive upon the executors and administrators of the deceased (*a*) but the reasons suggested by Staundeford (*b*) whom he quotes, are very unsatisfactory. Lord Hale is of a different opinion (*c*) conceiving it to be a great hardship that an inquisition which is no more than an inquest of office taken perhaps behind the backs of the executors or administrators of the deceased should be conclusive (*d*) and he cites Barclee's case (*e*) and a record in the Exchequer (*f*) where a creditor of one Paige who was found *felo de se* by a coroner's inquisition traversed the finding and the jury found that he was not *felo de se*, from which he concludes that the inquisition is as much traversable as a presentment before the justices of oyer and terminer or of the peace, which is admitted to be traversable." It seems indeed to be now fully established (*g*) that such an inquisition may be removed into the King's Bench by *certiorari* and traversed by the executors or administrators of the deceased (*h*).

(*z*) Jervis on the Law of Coroners, 319; 1 Saunders, 363; 1 East's Pleas of the Crown, 391.

(*a*) 3 Coke's Institutes, 55.

(*b*) Pleas of the Crown, 183.

(*c*) Anonymous, 1 Ventris, 239, and see 1 Ventris, 278; King v. Ripley, 2 Jones, 198; 2 Levinz, 152.

(*d*) 1 Hale's Pleas of the Crown, 416-417.

(*e*) 1 Siderfen, 90, 101 (1650).

(*f*) 45 Edward III, Walter Paige's Case and see 8 Edward IV, 4.

(*g*) King v. Ripley, Skinner, 45 pl. 16 s. c.; 2 Jones, 198 (1680); 3 Keble, 604; King v. Aldenham, 2 Levinz, 152; 3 Keble, 564, 566, pl. 84 (1675); Anonymous, 1 Ventris, 182, 239, 278, 352; Popham, 209; 1 Rolle's Reports, 217; 7 Modern, 10; 3 Keble, 489; 8 Edward IV, 4a; King v. Storke, 2 Keble, 800 (1679); Brooke's Abridgment Traverse *sans clo*, 209; 1 East's Pleas of the Crown, 389; 1 Hale's Pleas of the Crown, 416; 1 Wms. Saunders, 363.

(*h*) King v. Aldenham, 2 Levinz, 152, *sub nom* Anonymous, 1 Ventris, 278; Freeman's Reports, 419-443 (1675). The reason is his being absent from the inquest is in law flight, Anonymous, Freeman's Reports, 419, pl. 556 (1675). Even though Coke holds contrary, Greton's Case, Freeman's Reports, 433, pl. 608. But see Queen v. Clerk,

But many of the cases which say the finding of *felo de se* is traversable say that of *fugam fecit* is not. But even *fugam fecit* has been held traversable (i) and yet we find the proposition that flying for felony found before the coroner upon indictment is not traversable, but such flying found upon indictment before the commission is (k).

Where a felon was found to have fled, *super visum corporis*, he forfeited his goods even if he was found not guilty by the petit jury (l). There is an old theory that if the petit jury specify that the accused is not only not guilty but that he made no flight his goods would not be forfeited (m). Certainly if they did so specify there was no forfeiture (n). The rule that the accused should forfeit even though found not guilty seems harsh and unreasonable. There are two reasons upon which this harsh rule was based: 1. because the inquest was not traversable; 2. because by the inquest the goods became lawfully vested in the king (o), and once so vested could not be divested. It

1 Salkeld, 377, pl. 21 (1702), *King v. Parker*, 2 Levinz, 140, and *King v. Ripley*, 2 Shower, 199. In *Skinner*, 45 Hale, C. J., said he did not approve of a *melius inquirendum* where *felo de se* has been returned for the inquest is traversable and it was resolved *per cur* that an inquisition before the coroner taken *super visum corporis* that finds that the person was *felo de se* and *non compos mentis* may be traversed, but *fugam fecit* in an inquisition before the coroner cannot be traversed, Anonymous, 1 Ventris, 278 (1675).

(i) Jervis on the Law of Coroners, 282-4; 1 Saunders, 362; 2 Burn's Justices, 43 (Edition of 1845).

(k) 36 Henry VI, 31; Brooke's Abridgment Traverse, 383, pl. 229; 6 Viner's Abridgment, 252, and see also 6 Edward IV, 43. An inquisition on a *melius inquirendum* is traversable, but not *super visum corporis*, Carthew, 72, 73, cited in *King v. Heatherfall*, 6 Viner's Abridgment, 256, for the justice takes the presentment of *felo de se*, when the coroner cannot.

(l) Dyer, 238; Hale's Summary, 171; Jenkins Century Cases, 4, c. 9; 2 Blackstone's Reports, 981, and see Coke's Entries, 356, and 1 Richard III, 6, for, says Britton, flight throws the guilt upon him so he ought to forfeit; Britton, c. 14, Sect. 2; 22 Assize, 76; 13 Henry IV, 13; 3 Edward III, 33; Foxley's Case, 5 Coke's Reports, 109 (1601); Fitzherbert's Abridgment Title Forfeiture, 29, 32, 35; 1 Hale's Pleas of the Crown, 363; 2 *Ibid*, 154; Staundeford's Pleas of the Crown, Book II, cap. 52.

(m) 13 Edward IV, 3b; 14 Henry VII, 2b; they must find by whom the deceased was killed "which serves as an indictment against another person," 13 Edward IV, 3b.

(n) In Petys Mss. Fragment, a case in the Exchequer, 3 Edward III, is recited to this effect.

(o) 13 Henry IV, 13 pl. 6; Foxley's Case, 5 Coke's Reports, 109 (1601); Anonymous, Dyer, 238, pl. 36 (1565); 2 Coke's Institutes, 147; 3 Keble, 564; 2 Levinz, 141.

has been argued that the finding of *fugam fecit* should cause a forfeiture of the goods even though the petit jury found there was no flight and acquitted the prisoner, the best reason seeming to be that the first finding was of greatest force and the flying should not have been given in charge of the jury upon arraignment (*p*). In opposition to this doctrine there is a record abstracted in Pety's MSS. of a presentment of *fugam fecit* by the coroner and of a forfeiture and seizure in a case of an accessory before the fact to murder of which, upon arraignment, he was acquitted, and the jury having found that he did not fly, restitution was awarded (*q*). But Hawkins argues with great force that where the jury acquit whether they find he did not fly or not restitution should be made (*r*). We cannot but see the force of this argument. The old rule is both harsh and unreasonable, both the grounds upon which it rests are fallacious for the inquest has been held traversable and the maxim that the king can do no wrong ought to be misapplied to prevent a forfeiture of an innocent man's goods (*rr*). Besides it is hard to see upon what reasonable ground an innocent man can be held to have forfeited his goods.

The return of outlawry was not conclusive (*s*). The coroner's record of abjuration or prison breach or confession by an approver was of no weight but to estop the person making it from traversing it or showing he made it under duress (*t*), and so if the party plead he is not the same party who made the abjuration, etc. the record was conclusive (*u*). But the judge might take an inquiry of the people

(*p*) Anonymous, Dyer, 238, pl. 36 (1565); Fitzherbert's Abridgment Title Forfeiture, 32; Brooke's Abridgment Title Coroners, 132, Foxley's Case, 5 Coke's Reports, 109b (1601).

(*q*) Umfreville's Lex Coronatoris, 73-74.

(*r*) 2 Pleas of the Crown, c. 9, Sect. 54.

(*rr*) For an ancient and learned discussion of this point see appendix.

(*s*) Proctor's Case, 2 Dyer, 222b (1563); 1 Rolle's Reports, 217.

(*t*) Hale's Summary, 171; Fitzherbert's Abridgment Title Coroners, 118, 124, 134, 169; Britton, c. 1, Sect. 36; Staundeford's Plea of the Crown, 52; 25 Edward III, 42, pl. 35; 12 Assize, 19, 29; 9 Coke's Reports, 31b.

(*u*) Fitzherbert's Abridgment Title Coroners 124; Staundeford's Pleas of the Crown, 52; Britton, c. 1, Sect. 36.

living next, whether this be so or not (*v*). It is said that if the coroner found murder committed in a certain town and *fugam fecit*, the township had no right to traverse the flight, for it only affects the amercement of the township and *de minimis non curat lex* (*w*).

As has already been indicated, the investigation of the sheriff, justices or commissioners on a *melius inquirendum* was beyond doubt traversable (*x*).

Sect. 59. We now come to the effect of the inquest as evidence. We are told (*y*) that in England only the testimony given at the inquest is evidence in civil cases, not the verdict. But this is doubtful. In *King v. Brunswick* (*z*) the depositions of two witnesses since dead were read in evidence, the court saying "this is good evidence of murder or any other crime." In Lord Morley's case (*a*) it was resolved that if a witness examined before the coroner be dead or unable to travel his deposition may be read, the coroner first making oath that such examinations are the same which he took upon oath and this is so though the defendant were absent at the inquest and had at best no opportunity to cross-examine (*b*). There are certain requisites, however, to the admission of such depositions. "If

(*v*) Fitzherbert's Abridgment Title Coroners, 118, 124, 169; 12 Assize, 29; Brooke's Abridgment Title Coroners, 75; 2 Hawkins's Pleas of the Crown, c 9, Sect. 52.

(*w*) Staundeford's Pleas of the Crown, 34, 35, 51, 183; 2 Hawkins's Pleas of the Crown, c 9, Sect. 53. The amercement was not what was held *de minimis*, however.

(*x*) 2 Levinz, 141; Carthew, 72; 1 Hale's Pleas of the Crown, 414-5; Coke's Pleas of the Crown, 55, and see Laughton's Case, 1595 in the King's Bench, Coke's Pleas of the Crown, 55b, mentioned 1 Hale's Pleas of the Crown, 414, and Greve's Case in 1656, *Ibid*; 2 Hale's Pleas of the Crown, 59, even though the finding be *fugam fecit*, 47 Edward III, 26; 1 Hale's Pleas of the Crown, 414.

(*y*) 3 Encyclopedia of Evidence, 574, citing 9 Carrington & Payne, 601; 38 English Common Law, 245.

(*z*) 2 Keb., 19; *sub nom* Brunswick's Case, 1 Levinz, 180 (1666). In *Rex v. Paine*, 1 Lord Raymond, 729, s. c., 1 Salkeld, 281 (1692) a deposition before a justice of the peace by a deponent since dead was not received under the statute of 1 and 2 Philip and Mary, Chapter 13, but this decision is limited to the particular case of felony, notes 2 and 3 Philip and Mary, c. 10, extends the former act to cases where the prisoner is committed.

(*a*) 3 State Trials, 941; Keyl, 56.

(*b*) Whether this means an opportunity to cross-examine does not appear, 7 State Trials, 421.

the court be satisfied the witness is absent at the procurement of the prisoner the deposition may be read, but if he be absent from the trial of his own accord, and all efforts are used to find him and they fail, still his deposition cannot be read in evidence" (c).

(c) 3 State Trials, 941; 7 State Trials, 421; Keyl., 56.

CHAPTER VIII.

THE MINISTERIAL DUTIES OF THE CORONER.

Sect. 60. The chief ministerial duty that the coroner had to perform in England was as substitute to the sheriff (*a*). Process was awarded to the coroner from very early times (*b*). "When exception can be taken to the sheriff for suspicion of partiality [as where he is interested in the suit (*c*) or kindred to either plaintiff or defendant] (*d*) the process must then be awarded to the coroner instead of to the sheriff for execution of the king's writs" (*e*). In all proceedings against the sheriff process should be awarded to the coroner (*f*). In *Weston v. Coulson* (*g*) a motion was made to set aside the proceedings because the *latitat* against the sheriff was directed to himself and not to the coroner. It was argued that the *latitat* was merely process (*h*) and the sheriff might serve it (*i*) as well as another and that it is not like a *fieri* or *venire* where his partiality might be of importance, but the court held it was irregular and set aside the proceedings. If the array be quashed for partiality on the part of the sheriff the *venire* was then directed to the coroner (*k*), but it never went to the coroner except by award of the court upon some special incapacity of the sheriff challenged and sug-

(*a*) 4 Coke's Institutes, 271; 1 Blackstone's Commentaries, 349. It is not my purpose to consider the duties of sheriff. The coroner when acting as his substitute is under the same rules of law as he, but those rules are the subject of a work on sheriffs.

(*b*) Plowden, 73.

(*c*) *Weston v. Coulson*, 1 Wm. Blackstone's Reports, 506 (1763); 27 Assize, 47; Staundeford's Pleas of the Crown, 64; Hale's Summary, 171.

(*d*) Comyns' Digest Title Officer, G. 13.

(*e*) 1 Blackstone's Commentaries, 349. But only at the petition of the parties, 22 Henry VI, 41b.

(*f*) 7 Henry VI, 33 a, 36 a "per *Newton & non negatum*."

(*g*) 1 Wm. Blackstone's Reports, 506 (1763).

(*h*) As distinguished from execution.

(*i*) How he was to serve himself does not appear.

(*k*) Comyns Digest Title Officer, G. 13.

(*l*) Skinner, 102. See Umfreville's *Lex Coronatoris*, 235.

(*m*) Brooke's Abridgment Title Officer, pl. 43; 43 Edward III, 26, and the coroner shall attach the sheriff, *Ibid*.

gested upon the roll and admitted or not denied by the parties. Upon this surmise by assent of the parties the entry of the award of the *venire* is of course to the coroners (*l*). If the sheriff did not serve in *replevin* at the *pluries* process issued to the coroner (*m*).

In this connection it is to be noted that the coroner acted as substitute for the sheriff and not instead of the sheriff and therefore if the sheriff was dead or amoved (*n*), or if for any reason there was no sheriff (*o*) the coroner could not act. But the sheriff must be absolutely an improper person before process could be awarded to the coroner (*p*); therefore, if there were two sheriffs in the county, and one was improper, process must be awarded to the other (*q*).

Process was awarded to all the coroners as we shall see later, yet if there be but one coroner in the county process was directed to him alone (*r*). If one of the coroners was challenger then the process must be awarded to the others (*s*). If the coroners were all interested then process went to elisors appointed by the court (*t*). In Fortesque's time these elisors were either two clerks of the court or others of the county who in the presence of the court upon their oath (*u*) aver to make an indifferent panel (*v*). The award to elisors was unusual. Where the sheriffs and

(*n*) 22 Henry VI, 41b. See 4 Modern, 65.

(*o*) King v. Warrington, 1 Salkeld, 152 pl. 2 (1692).

(*p*) *Ibid*.

(*q*) Salkeld, 152; 12 Modern, 22; 1 Shower, 327; 2 Shower, 262, 286; Lilly's Entries, 483.

(*r*) Jenkins, 85, pl. 65.

(*s*) King v. Warrington, 1 Salkeld, 152, pl. 2 (1692) in the reign of Queen Ann it appeared that the two coroners were renters of the sheriff and he was interested and this was specially entered on the roll and a special venire was prayed to the other two coroners naming them and was awarded with a clause forbidding the two interested ones from intronitting Ms. cited in Umfreville's Lex Coronatoris, 227. See 1 Shower, 328-9; 2 Shower, 286.

(*t*) 2 Wm. Blackstone's Reports, 911; Umfreville's Lex Coronatoris, 237, process, but not execution is awarded to elisors. *Ibid*, 241, two elisors at least for a venire, a venire awarded to one elisor is not good, see 2 Henry, VI, 12; Dyer, 367. It is error even after verdict (1653) C. B. Cory's Notes, Umfreville's Lex Coronatoris, 242.

(*u*) *Quaere*, Umfreville's Lex Coronatoris, 238.

(*v*) Fortesque, ch. XXV.

coroners of particular liberties had been challenged the process was awarded to the county officer (*w*). In cities the rule was but little different from what it was in the country. If a sheriff of a city in a county were in contempt the attachment went to the coroner, not to the mayor or chief officer of the corporation in such city or town and if the offender were out of office the attachment had to be directed to the new sheriff (*x*).

While process and execution had long been awarded to the coroner the original is supposed to have been first granted to the coroners in 6 Edward VI (*y*) where the original writ of assize was awarded to and executed by five out of six coroners, one having been challenged on account of consanguinity to one of the defendants, oyer was craved of the writ and after argument on demurrer a *respondeat ouster* was awarded (*z*). Yet we find as early as 2 Henry VI (*a*) an original in trespass was awarded to the coroners against the sheriff and two others. Again in 18 Edward IV (*b*) and 14 Henry VII (*c*) originals seem to have been awarded to the coroners.

When the original had been awarded to the coroner all subsequent writs had to be so awarded (*d*) for once process had been issued to the coroner the sheriff could not *intromit* (*e*), for as the old books say, he was no longer an officer in that case (*f*). When elisors were once

(*w*) Umfreville's Lex Coronatoris, 239.

(*x*) Anonymous, 2 Ventris, 216 (1620).

(*y*) 1553 Umfreville's Lex Coronatoris, 233.

(*z*) Plowden, 73; see Jervis on the Law of Coroners, 54.

(*a*) 1424, 2 Henry VI, 12a.

(*b*) 1479, 18 Edward IV, 7b.

(*c*) 1499, 14 Henry VII, 31b.

(*d*) Even though the sheriff have been found not guilty, 2 Henry VI, 12a, and see 18 Edward IV, 7b and 14 Henry VII, 31b. (1602).

(*e*) Skinner, 102; 43 Edward III, 26, *et per* Lee, C. J., Palmer, 370 (1624); Morgan v. Wye, Croke's Elizabeth, 574 (1594); Corne v. Pastow, Yelverton 15, s. c.; Croke's Elizabeth, 894 (1602). See Moore, 356; s. c.; 5 Coke's Reports, 36; Sairbi v. Candith, Yelverton, 214 (1612); Gregory v. Booker, Croke's Elizabeth, 586 (1598).

(*f*) Corne v. Pastow, Yelverton, 15, s. c.; Croke's Elizabeth, 894

appointed neither the sheriff nor the coroner could *intromit* (g).

Even if the old sheriff died or were removed and a new sheriff appointed who was not exceptionable process must go to the coroner (h), and to issue process to the new sheriff was deemed error (i); nor was it helped after verdict by the statute of jeofails (k), but process wrongly directed to the coroner was so helped (l).

As we have seen the coroner was substitute for the sheriff and as such might if necessary call in the *posse comitatus* (m).

We have observed that in almost all counties there was more than one coroner and we have also observed that one coroner might sit to hold an inquest (n). Two coroners ought to be judges of redesseisin, one served to pronounce an outlawry but the entry ought to be made in the name of all and process should be directed to all (o) for it took all the coroners to do a ministerial act (p). It may be legend that it takes nine tailors to make a man, but it is certain that it took all the coroners in the county to make one officer (q). As the coroners were one officer the act of one was sometimes considered the act of all for

(g) 15 Edward IV, 24; 18 Edward IV, 8.

(h) Comyns Digest Title Officer, G. 13; Moore, 356-422.

(i) Moore, 356.

(k) 32 Henry VIII, c 30; see Moore, 356.

(l) Dyer, 367r, the Staute of 33 Henry VIII, c 70, acts in the same way.

(m) Hobart, 85; Jervis on Coroners, 53.

(n) See *ante*, Sects. 45, 46, 47, 48, 49.

(o) Jenkins, 85, pl. 65, where it is said all should serve the writ and see 14 Henry IV, 34, to the same effect. But if there is but one coroner in the county he will do, *Ibid.* Staundeford's Pleas of the Crown, f 53a.

(p) 14 Henry IV, 34; Jenkins, 85, pl. 65; 2 Hale's Pleas of the Crown, 56.

(q) 3 Levinz, 399; see 1 Modern, 98; in *Rex v. Dolby*, cited Umfreville's Lex Coronatoris, 144, the coroners were directed to return a special jury which they did, but the tales being required it was returned by one coroner who happened to be in court. It was objected that the return must be by all, the act of one coroner being insufficient where all were empowered to act ministerially and the validity of the objection was admitted. See Jervis on Coroners, 55; Staundeford's Pleas of the Crown, f 53a, and Anonymous, Comberback, 435. If there are four coroners in a county three cannot return the writ, 31 Assize 20.

the purpose of making them liable for misfeasance (*r*). They were all liable for an escape (*s*), a false return (*t*), or an attachment (*u*), and if one was guilty of malpractice ministerially the court exercised summary jurisdiction over them all (*v*). But they were not responsible criminally unless the act or omission were their own or by them permitted (*w*). While all the coroners were required to act ministerially the rule had its limitations; thus one coroner or the servant (deputy) of one coroner—for this purpose the coroner might appoint a deputy without deed (*x*)—had authority to make an arrest but the return was made by all (*y*) or joined in by all (*z*). So if there were but two coroners in a county and process issued to them and one die the other could not return the writ until another coroner has been elected, but if there were more than two and one die the remaining coroners could return the writ so they were plural (*a*). An arrest was made in the name of all (*b*). If one of the coroners were challenged the others must act (*c*); if therefore the writ be directed to the cor-

(*r*) 1 Modern, 98; 2 Modern, 23; Naylor's Case, Freeman, 191; Stauneford's Pleas of the Crown, 53a.

(*s*) 1 Modern, 98; 6 Modern, 37, even though Holt did say "tis mischievous," Anonymous, Comberback, 435; Naylor's Case, Freeman, 191-2, pl. 195, and see Taylor v. Clark, 3 Levinz, 399 (1695) A & B were coroners, C issued a writ to take the sheriff which B did and afterwards permitted an escape. A had no notice. C sued them both. Holt C. J. on the trial said that the two coroners made one officer and the act being a ministerial one was the act of both and directed a verdict for the plaintiff, but because of the hardship signed a bill of exceptions. On the argument, Treby C. J. inclined for the plaintiff and Powell J. for the defendant and Rookby J. doubted.

(*t*) Naylor's Case, Freeman, 191-2 pl. 195.

(*u*) 2 Bl., 911.

(*v*) 8 Modern, 192.

(*w*) 8 Modern, 193; Lord Raymond, 1574.

(*x*) Clecott v. Dennys, Croke's Elizabeth, 67 (1588).

(*y*) Jenkins, 85, pl. 65; 14 Henry IV, 34b, per Hank, J.; 39 Henry VI, 41, 2 Hale's Pleas of the Crown, 56; Rich v. Ployer, 2 Shower, 286, pl. 283 (1683).

(*z*) 4 Edward IV, 43; Fitzherbert's Natura Brevium, 163; 14 Henry IV, 34, per Hank, J.; 39 Henry VI, 41.

(*a*) 14 Henry IV, 35a; 31 Assize, 20; 2 Hale's Pleas of the Crown, 56.

(*b*) Jenkins, 85, pl. 65, so where the coroner made the return in his name alone it was held bad, but the rescuers he returned were taken on attachment and sent to the fleet, 39 Henry VI, 40.

(*c*) Queen v. Warrington, 1 Salkeld, 152, pl. 2.

oners and one die, the other coroners, if there be more than one, can serve it; but where there are only two the survivor cannot act for he is not "the coroners" (*d*), and the same rule applies where there are more than two and all but one die (*e*).

The ministerial acts of a coroner may be executed on Sunday, for, says Umfreville (*f*), otherwise they may never be executed, yet in *Hoyle v. Lord Cornwallis* (*g*), it was determined that the execution of a writ of inquiry on Sunday is void.

(*d*) Fitzherbert's *Natura Brevium*, 162-163 N.; 14 Henry IV, 39.

(*e*) *Ibid.*

(*f*) *Lex Coronatoris*, 177.

(*g*) 1 Strange, 387.

PART II.

The Office and Duties of Coroners in Pennsylvania, Viewed in the Light of Their Origin.

CHAPTER I.

THE EARLY HISTORY OF CORONERS IN PENNSYLVANIA.

Sect. 61. We have seen the rise and development of the office of coroner in England, down to the settlement of Pennsylvania, and looked with considerable care into the various powers and duties which then and there attached to the office. We are now to trace the transition of the institution across the ocean. We are told that the common law of Pennsylvania is that of England modified to such extent as the changed conditions of the colonists rendered requisite. The reason for this is obvious. The settlers in Penn's territory brought with them the common law of England as part of their heritage, but so utterly different were the conditions they found here that many parts of the common law were never called into operation while others were utterly impossible of enforcement. The early history of the colony seems to show that the good Friends who came to America had but little need of the law. They seem to have existed wholly without such minor details as courts, sheriffs, coroners, constables and bailiffs for a surprising length of time.

From the absence of law which existed at the first settlement of the country the office of coroner emerges full fledged, with certain very definite alterations. These alterations we shall have occasion to notice during the course of our consideration of the office and its duties in Pennsylvania, but certain of them remain to be observed before we take up the further consideration of the powers and duties of the coroner today.

One of the changes which was understood from the beginning found legislative expression in the Act of 1705

(a), namely, that no coroner should take office until he had taken and subscribed a declaration of his Christian belief, and an *affirmation* for the due execution of his office.

The origin of the principal change which was made remains, however, in more or less obscurity. As we have already seen (b) it was the custom in England to elect four or more coroners in each county. When the little colony on the Delaware began to assume a definite shape and to need a more complete government it was divided into three counties, Philadelphia, Chester and Bucks. So few were the inhabitants at this time that they were all (being freemen) made members of the general assembly. Such being the case it would have been absurd to appoint twelve coroners. Accordingly, in the Frame of Government of 1682 (c) it was provided (d) that in view of the fact that it would be burthensome to put the people to frequent elections the Proprietary would appoint county officers (e) to hold office so long as they should well behave and from and after their death or removal from office the people should elect their successors; that is to say, they should elect double the number of persons who were to serve (f), and should present them to the governor who should "nominate and commissionate" one to serve in each office. Following out this idea, Penn, on September 16, 1685, appointed Robert Hall coroner of the county of Bucks (g), during the same year James Kemmerly and Griffith Owen were appointed coroners of the counties of Chester and Philadelphia respectively (h). Of course when their successors were elected but one coroner was appointed by the governor for each county and so it has remained to the present day

(a) Act of January 12, 1705-6, Chapter CLXI, 2 Statutes at Large, 272.

(b) *Ante*, Sect. 23.

(c) Poore's Federal and State Constitutions, page 1522.

(d) Article XVIII.

(e) "Sheriffs Coroners," etc. Coroners' fees were carefully regulated by a statute passed that year (1682) at Upland, but there seems to have been no coroner to receive the fees, see Chapter XII, Post.

(f) Article XVII.

(g) Pennsylvania Marriages, 742.

(h) Pennsylvania Marriages, 674-697, it is worthy of note, however, that sheriffs were appointed for all the counties in 1682.

(i). The frame of the government of 1696 passes over all such minor details as coroners, sheriffs or county treasurers except as to the oath they are to take. The Charter of Privileges of 1701 which remained in force until the Revolution provides (k): "That the freemen in each respective county at the time and place of meeting for electing their representatives to serve in assembly may as often as there shall be occasion *chuse* a double number of persons to present to the governor for sheriffs and coroners to serve for three years if they so long behave themselves well, out of which respective elections and presentments the governor shall nominate and commissionate one for each of the said offices the third day after such presentment or else the first named in such presentment for each office as aforesaid shall stand and serve in that office for the time before respectively limited and in case of death or default such vacancies shall be supplied by the governor to serve to the end of the said term," and in case of default in electing successors the officers in office shall hold over until successors are duly elected and qualified. Section 1 of the Act of January 12, 1705-6 (l) provided that the term should be but

(i) Other evidence of the fact that there has always been but one coroner in each county is found in the act of 1705, Chapter CLXI, Sect. 2, 2 Statutes at Large, 275, allowed to become a law by lapse of time, which provides that the coroner of the County of Philadelphia, shall also be the coroner for the City of Philadelphia. So, the act of 27 January 1749-50, 5 Statutes at Large, 92, confirmed by King in Council, May 13, 1751, enacted that until the people of the newly erected County of Cumberland should elect a coroner, the coroner of Lancaster should act for them and see similar acts for Berks, 11 March, 1752, Sect. 13, 5 Statutes at Large, 138, Northampton, 11, March, 1752, Sect. 13, 5 Statutes at Large, 145, Washington, 28 March, 1781, 10 Statutes at Large, 278, the act of 3 Sept., 1776, Sect. 7, 9 Statutes at Large, 17, bridges the gulf between the colonial and state governments by continuing the county officers in office until new elections or appointments were had.

(k) Article III, Poore's Federal and State Constitutions, page 1538.

(l) Chapter CLXI, 2 Statutes at Large, 272; this act was somewhat modified by Sect. 1, of the Act of August 24, 1717, which was also allowed to become a law by lapse of time and by section 2, of the Act of March 20, 1724-5, 4 Statutes at Large, 19-20. It was repealed by the Act of 1785, but in the meantime the constitution of 1776 had practically re-enacted this law *ipsa verba*, see *supra*. By the Act of 11 March, 1752, confirmed by the King. May 10, 1753, 5 Statutes at Large, 159, it was made a penal offence for a coroner or candidate to give strong liquor for a vote for himself and the person so offending to be incapable of holding office for one year thereafter.

one year. This act was allowed to become a law by lapse of time in accordance with the proprietary charter having been considered by the Queen in Council on October 24, 1709, and not acted upon. In substance it remained in force until the enactment of the constitution of 1838 (*m*).

The county coroner is the only kind of coroner whose office was found necessary in Pennsylvania. His jurisdiction included the whole ground covered by all different kinds of coroners in England. Of this jurisdiction we shall speak later.

(*m*) The constitution of 1776, Sect. 31 Provided that "sheriffs and coroners shall be elected annually in each city and county by the freeman that is to say, two persons for each office one of whom for each is to be commissioned by the President in Council." The Constitution of 1790, Art. 6, Sect. 1, provided "sheriffs and coroners shall be at the times and places of election of representative be chosen by the citizens of each county. Two persons shall be chosen for each office one of whom for each respectively shall be appointed by the Governor."

CHAPTER II.

ELECTION AND QUALIFICATIONS OF CORONERS AND VACANCIES IN THE OFFICE.

Election.

Sect. 62. We have now traced the history of the election of the coroner in Pennsylvania through the early stages of its development. The Constitution of 1838 (*a*) provides (*b*) "sheriffs and coroners shall at the times and places of election of representatives be chosen by the citizens of each county. One person shall be chosen for each office who shall be commissioned by the governor."

Under the constitution of 1874, coroners are denominated county officers and are elected as such at the general election (*c*). In this way everything unusual or extraordinary in the election of the coroner has ceased to exist. It would therefore not be profitable to inquire how coroners are elected. The number of coroners is not specified in the constitution of 1874, and as that document overturns the previous government (*d*) it is difficult to see upon what ground one coroner is chosen unless it be under section 2 of the schedule (*e*). Nevertheless one coroner only is elected in each county for a term of four years (*ee*).

Oath.

Sect. 63. No qualification as to degree or property ever seems to have been required of the coroner in Pennsylvania, but quite different qualifications have long been enforced. The coroner is still sworn (or affirmed) to the faithful performance of his duties, but in place of the qualification of knighthood or lands a bond is now requisite. Aside from these qualifications we may assume that if the

(*a*) Poore's Federal and State Constitutions, p. 1557.

(*b*) Article VI.

(*c*) Article XIV, Sects. 1 and 2; Purdon's Digest (13th Ed.) 202-3.

(*d*) *Wells v. Bain*, 75, Pa. St. 39 (1874); *Wood's Appeal*, 75 Pa. St. 59 (1874).

(*e*) Purdon's Digest (13th Ed.) 218.

(*ee*) The amendments to the state constitution enacted in 1909, lengthened the coroner's term from three to four years (See Amendment to Art. XIV, Sect. 2). 5 Purdon's Digest 5197 (13th Edition).

coroner so far engage in other business (*f*) that he cannot have leisure enough to attend to his duties as coroner, he might be impeached. If he be chosen to some other public office, the constitution prevents his retaining that of coroner. But if the coroner should refuse under any of these circumstances to give up the office, it seems the remedy would be by impeachment and not by writ *de coronatore exonerando*.

In early colonial times the coroner was required to make a declaration of his Christian belief (*g*), but this has long since been done away with. Certainly since the Act of January 12, 1705-6, he has been obliged to take an oath or affirmation for the due execution of his office (*h*), and in the absence of such statutes he would be so obliged by the common law of this Commonwealth.

Bond.

Sect. 64. This qualification has been substituted for that of ownership of land. Every coroner is required to enter into a recognizance and give bond (*i*), to well and truly perform all and singular the duties to the said office of coroner appertaining (*k*). This bond is taken in the

(*f*) We cannot say "public business" according to the old authorities for that is contrary to the constitution.

(*g*) See Act of January 12th, 1705-6, Chapter CLXI, 2 Statutes at Large 272.

(*h*) An affirmation was made possible instead of an oath by Act of 27 November, 1700, Chapter CXXXII, which was repealed by the Queen in Council January 7, 1705-6. It was substantially re-enacted January 12, 1705-6, Chapter CLX, which act was repealed by the Queen in Council January 8, 1707-8. It was again enacted February 28, 1710-11, again repealed December 19, 1711, and again enacted May 28, 1715, and this act was allowed to become a law by lapse of time, see 2 Statutes at Large, 267-355, and 3 Statutes at Large, 39. See also form of affirmation, 2 Statutes at Large, 267.

(*i*) By the Act of 15 April, 1834, Sect. 66, P. L. 550, which provides: "The coroner of each county, before he shall be commissioned or execute any of the duties of his office, shall enter into a recognizance and become bound in a bond, with at least two sufficient sureties, in one fourth of the sum which shall be by law required from the sheriff of the same county."

(*k*) Section 67, of the Act of 15 April, 1834, P. L. 550, provides: "The condition of the recognizance and bond to be given by the coroner, shall be, that such coroner will well and truly perform all and singular the duties to the said office of coroner appertaining, and such recognizance and bond shall be a security to the Commonwealth and to all persons whomsoever, for the faithful discharge and due performance of all the duties required by law from such coroner."

name of the Commonwealth of Pennsylvania, the sureties being approved by the judges of the court of common pleas (*l*), and is for the use of all persons who may in any way be injured by the wrongful acts of the coroner. The bond and recognizance must be recorded in the office of the recorder of deeds (*m*) and are by him transmitted to the Secretary of the Commonwealth. When the Governor commissions the coroner the latter must have the commission recorded also (*n*), and until all these preliminaries are completed he has no right to act as coroner (*o*).

Unless a recognizance be given by the coroner his commission and all his acts under it are void, and there can be no recovery on his official bond (*p*), but this is limited by sections 70 and 71 of the act of 1834 (*q*) which are:

(*l*) Section 69 of the Act of 15 April, 1834, P. L. 547, provides: "Before any such bond or recognizance shall be taken by the recorder of deeds, the sufficiency of the sureties therein named shall be submitted to and approved of by the judges of the court of common pleas of the proper county, or by any two of them, for that purpose convened, who shall certify their approbation of such sureties to the recorder; and no commission shall afterwards be granted until the Governor shall have also approved of the sufficiency of such sureties."

(*m*) By Section 68 of the Act of 15 April, 1834, P. L., 547, which provides: "every such recognizance entered into by a sheriff or coroner, shall be taken by the recorder of deeds of the proper county, and recorded in his office; and when so recorded, shall be by him transmitted to the secretary of the commonwealth, with a certificate endorsed by such recorder, of its having been duly recorded. See *Brownfield v. Commonwealth*, 13 S. & R., 265 (1825)."

(*n*) By section 72, of the Act of 15 April, 1834, P. 547, which provides: "It shall be the duty of every sheriff and of every coroner, immediately after receiving his commission from the Governor, to deliver the same to the recorder of deeds of the county by whom the same shall be recorded at the expense of such sheriff or coroner."

(*o*) See Section 73, of the Act of 15 April, 1834, P. L. 547. "No, person elected or appointed to the office of sheriff or coroner, shall presume to execute any of the duties of such office, before a commission shall have been duly granted to him, and left for record as hereinbefore provided, under a penalty of imprisonment for a term not exceeding six months, at the discretion of the court of Quarter Sessions of the county, provided, that such person shall nevertheless be liable to any person injured by any acts done by him under color of such office."

(*p*) *Young v. Commonwealth*, 6 Binney 88 (1813). See sect. 62 of the Act of 15 April, 1834, P. L., 547. By Sect. 63 the amount of the bond and recognizance is fixed, it varies from \$80,000 in Philadelphia County to \$5,000, in Greene, Crawford, Warren, McKean, Clearfield and Potter. The form of the bond and recognizance is given in the appendix. The sections here referred to surplant and repeal the Act of 28 March 1803, P. L., 497.

(*q*) Act of 15 April, 1834, P. L., 547.

"Section 70. Provided, that no judge, clerk or prothonotary of any court or attorney at law, shall be permitted to become a surety in such bond or recognizance, and that no person shall be received as surety for a sheriff and for a coroner at the same time.

Section 71. Copies of the record of any such bond or a recognizance, acknowledged and recorded as aforesaid, and duly certified by the recorder of deeds for the time being, shall be good evidence in any action brought against the obligors or cognizors, according to its form and effect, in the same manner as the original would be if produced and offered in evidence."

In an action on the bond the execution of it and acting in office are *prima facie* evidence that the sureties have been approved (r).

All the real estate of the coroner and his sureties in the same county is bound by the lien of the recognizance (s). Suits thereon are still regulated by the act of 1803 (t), which reads as follows:

"Whenever the commonwealth or any individual or individuals shall be aggrieved by the misconduct of any sheriff or coroner it shall and may be lawful as often as the case may require to institute actions of debt or of *scire facias* upon such recognizance and against such sheriff or

(r) *Young v. Commonwealth*, 6 Binney, 88 (1813) and see *Young v. Commonwealth*, 4 Binney, 113 (1811), *Dunn v. Commonwealth*, 14 S. & R., 431 (1826).

(s) By section 74 of the Act of 15 April, 1834, P. L., 547, "All the real estate, within the same county, of a sheriff and coroner, and their respective sureties, shall be bound by a recognizance taken in manner aforesaid, as effectually as by a judgment to the same amount in any court of record of such county; and it shall be the duty of every recorder of deeds, so soon as a sheriff or coroner shall be commissioned, to certify the recognizance taken by him to the prothonotary of the court of common pleas of the same county, who shall enter the names of the parties thereto upon his docket, in like manner as judgments are by law directed to be entered."

Such lien is discharged by a judicial sale under a precedent mortgage, *Sprang v. Commonwealth*, 12 Pa. St., 358 (1849). But not by a sale under a subsequent incumbrance, *McKensy's Appropriation*, 3 Pa. St., 156 (1846), but see *Morris's Estate*, 4 Pa. St., 162 (1846). It does not bind after purchased lands, *Fricker's Appeal*, 1 Watts, 393 (1833).

(t) 28 March 1803, Sect. 4 P. L., 497, 4 Smith's Laws, 48. This section is still in force. *Commonwealth v. Rainey*, 4 W. & S., 186 (1842).

coroner and their sureties, their heirs, executors or administrators, or actions of debt upon such obligation against such sheriff or coroner and their sureties, their heirs, executors or administrators, and if upon such suits it shall be proved what damage (*u*) hath been sustained and a verdict and judgment shall be thereupon given (*v*), execution shall issue for so much only as shall be found by the said verdict and judgment with costs, which suits may be instituted and the like proceedings be thereupon had as often as damage shall be so as aforesaid sustained (*w*). Provided always that such suit or suits against such sureties, their heirs, executors or administrators shall not be sustained by any court of the commonwealth unless the same shall be instituted within five years (*x*) after the date of such obligation or recognizance" (*y*).

(*u*) The plaintiff must show some actual loss or damage; mere misconduct of the officer is not sufficient, *Commonwealth v. McCoy*, 8 Watts, 153 (1839); *Commonwealth v. Conter*, 21 Pa. St., 266 (1853); *Commonwealth v. Allen*, 30 Pa. St., 49 (1858); *Commonwealth v. Lelar*, 5 Clark, 167 (1852). In an action on the recognizance the judgment is not for the penalty, but for the damages sustained by the party suing, *Wolverton v. Commonwealth*, 7 S. & R., 273 (1821); *Campbell v. Commonwealth*, 8 S. & R., 417 (1822); *McMichen v. Commonwealth*, 58 Pa. St. 213 (1868). A judgment in trover against a sheriff is not conclusive upon his sureties upon the question of damages, *Carmack v. Commonwealth*, 5 Binney, 188 (1812).

(*v*) In an action on coroner's recognizance the judgment is not for the penalty, but for the damages sustained by the party suing, *Wolverton v. Commonwealth*, 7 S. & R., 273 (1821); *Campbell v. Commonwealth*, 8 S. & R., 417 (1822).

(*w*) A suit on a coroner's bond must be a separate one for each individual who has sustained injury, *Lynch v. Commonwealth*, 16 S. & R., 368 (1827). The person who first sues on the official bond of a coroner is entitled to have his judgment paid first, *Christman v. Commonwealth*, 17 S. & R., 381 (1828). But *quare* what is to happen where several sue and the last to sue is the first to get judgment.

(*x*) The time is to be computed from the date of its execution not from the time of its approval. *Wilson v. Commonwealth*, 7 W. & S., 181 (1844). The introduction of a new party by suggestion after the expiration of the statutory period is not the commencement of a new suit, *Commonwealth v. Springer*, 13 W. N. C., 305 (1883). But this cannot be construed to permit the introduction of a new cause of action. The lien of a recognizance as against the sureties is gone after the lapse of five years without suit on the recognizance, although there may have been a suit on the bond given at the same time. *Smith v. Miller*, 13 S. & R., 339 (1825).

(*y*) See *Shaeffer v. Jack*, 14 S. & R., 426 (1826). The lien of a sheriff's recognizance under this act was unlimited both in duration and extent as to the liability of the principal, *Snyder v. Commonwealth*, 3 P. & W., 286 (1831). But by the Act of 3 April, 1860, P. L., 650, the lien is limited to ten years throughout the State and by the Act of 13 April, 1868, P. L., 948, it is limited to five years in Philadelphia, and

Where one of the sureties for the coroner is desirous of selling his land the lien of the recognizance may be discharged on a petition to the court of common pleas, setting forth the sale and praying for the release, if the court is satisfied with the sufficiency of the other sureties (z).

Vacancies.

Sect. 65. In the frame of Government of 1683 we find the first mention of vacancies in the office of coroner in Pennsylvania. That document provides (a) that the governor shall fill the vacancy until the next general election by appointment, and such has been the law with immaterial alterations to the present time (b). When any person who has been elected coroner fails or refuses to qualify and assume the duties of the office, the office is treated as vacant

while the latter act applies to coroners the former does not, the lien of a coroner's recognizance, therefore must still be considered as unlimited as against the coroner himself, except in Philadelphia.

(z) By the Act of 8th June, 1881, P. L., 81, which is as follows: "That hereafter if the surety for the sheriff or coroner of any county in this Commonwealth shall make sale of any real estate bound by the lien of any recognizance and bond as surety for any sheriff or coroner he may present a petition to the court of common pleas of the county in which said recognizance and bond was taken accompanied by notice of such application to his co-sureties setting forth the fact of such sale and praying for a release of lien of said recognizance and bond upon the land described in the petition and the said court shall have the power to release said lien upon said land the court being satisfied of the sufficiency of the sureties after lien shall have been released."

In Philadelphia County the Act of 11 April, 1862, Sect. 1, P. L., 437, provides a method of escaping from the obligation of the recognizance altogether; it reads as follows:

"That whenever it shall be made to appear to any court in which suit has been or shall be brought and judgment entered thereon upon the official bond of a sheriff or coroner against such officer, and his sureties in the City and County of Philadelphia, that more than five years have elapsed since the execution of such official bond and that the claim of all parties claimant in such suit who have become such within five years from the execution of such official bond have been satisfied or otherwise finally disposed of, it shall be the duty of the said court on the application of the said sureties or either of them to order the judgment entered against such sureties in such suit upon such official bond for the penalty thereof, to be marked satisfied of record and the prothonotary of such court shall make such entry on the judgment index."

(a) Art. XVI, Duke of York's Book of Law, 159.

(b) See the Charter of Privileges, Poore's Federal and State Constitutions, p. 1536; Constitution of 1776, Poore's Federal and State Constitutions, p. 1540; Constitution of 1790, Poore's Federal and State Constitutions, p. 1548; Constitution of 1838, Poore's Federal and State Constitutions, p. 1557; Constitution of 1874; 1 Purdon's Digest (13th Edition) p. 111. 5 Purdon's Digest (13th Edition) p. 5197.

and may be filled by the governor until the next general election (*c*). If the coroner notoriously absconds, the governor may declare the office vacant and appoint a successor (*d*).

(*c*) Under the Act of 5 April, 1842, Sect. 11, P. L., 235, and see Grubb's Case, 3 Pa. J. L. R., 78 (1904).

(*d*) Under the Act of 24 March, 1846, Sect. 1, P. L., 165. In Erie Co Coroner's Case (op. Atty. Gen.) 1 Dist. 244, 11 Pa. C. C. R., 136 (1892), the attorney general says the governor has power to appoint a successor under the Act of 15 May, 1874, P. L., 205, but it would seem that the office being vacant the governor may appoint a successor without the aid of an enabling act.

CHAPTER III.

THE POWERS AND DUTIES OF CORONERS.

Sect. 66. As we have already noticed, when the office of coroner emerges from the obscurity which surrounds the early colonial law of Pennsylvania, we find it has undergone certain very definite changes. Appeals never formed a considerable item in Pennsylvania law and it would seem the coroner's duties in that regard were never transplanted to America. Wreck of the sea, also an important part of the coroner's jurisdiction, in a commonwealth of so narrow a water front as early Pennsylvania, naturally played a very unimportant part. Treasure trove seems also to have played an insignificant part, while deodand and forfeiture in Pennsylvania, if they existed at all (*a*), have long been obsolete. Robbed thus of the major portion of his ancient jurisdiction, the Pennsylvania coroner is limited in his common law duties to the holding of inquests of death and of prison breach. This latter power seems to have fallen into a state of desuetude, but though it probably never was exercised in Pennsylvania, we can see nothing in the altered conditions here which should take it from the coroner.

During colonial times the legislature seems to have felt the powers of the coroner had been too much reduced and added various duties quite inconsistent with the ancient character of the office. Thus the act which established the old court of errors and appeals (*b*) provided that the coroner should attend its sessions and established means for compelling his attendance in case of neglect. The coroner was also at one time compelled to attend the sessions of the colonial supreme court and the special courts of oyer and terminer (*c*). The provincial government, moreover,

(*a*) Deodands never existed in Pennsylvania and forfeiture has been practically abolished.

(*b*) The Act of 28 Feby., 1780, 10 Statutes at Large, 57, which was repealed by the Act of 3 April, 1791, Chapter 1575, and see the Act of 1 March, 1780, 10 Statutes at Large, 78.

(*c*) Sect. X of the Act of 28 Feby. 1710-11, 2 Statutes at Large, 314, repealed by the Queen in Council February 20, 1713-14.

gave the coroner extensive duties at elections (*d*). These powers passed away, not because of legislation intended to cut down the duties of the coroner, so much as by the creation of other officers to meet changing conditions with whose jurisdiction those duties were more in accord.

No general act regulating the duties of coroner was ever passed (*e*), and so the coroner has lost his ancient characteristic of collector of the king's revenue and has grown in Pennsylvania to be the county officer whose duty it is to investigate the cause of death of those who come to a sudden and violent end (*f*).

Sect. 67. One of the most striking differences between the powers of the coroner in England and those of the same officer in Pennsylvania, is that in the latter he has no power as a committing magistrate (*g*). He may not call upon the constable to summon his jury or serve subpoenas nor hire him to do so unless he intends to pay for it out of his own pocket (*h*). It at once appears that the office was much more dignified in England than it has ever been here (*i*).

The duties of the coroner in Pennsylvania are still both judicial and ministerial (*k*). The latter are wider in

(*d*) See the Act of 12 January, 1705-6, 2 Statutes at Large, 218, allowed to become a law by lapse of time and see 5 Statute at Large, 154-157. The Act of 20 December, 1776, 9 Statutes at Large 158, (repealed in 1778), provides that sheriffs and coroners in counties occupied by the common enemy might confine their prisoners in such places as they deem convenient and transmit those deemed guilty of felony to adjoining counties to be imprisoned.

(*e*) Per Hemphill J. in *McFadgen v. Chester County*, 10 Pa. C. C. R., 124, s. c. 7 Mont. 149 (1891). *Rentschler v. Schuylkill County*, 1 Schuylkill Legal Record, 289 (1880). The Act of April 16, 1907, P. L., 92, does not fill the requirements of a general statute.

(*f*) See *McFadgen v. Chester County*, 10 Pa. C. C. R., 124, s. c. 7 Mont., 149 (1891), and see the Act of 16 April, 1907, P. L., 92, which is merely in affirmance of the common law, *supra*.

(*g*) *Walker v. McKean County*, 31, Pa. C. C. R., 664; 15 Dist. 577 (1905), *contra*, *Coroner's Case*, 11 Phila., 387; 32 Legal Int., 142; 7 Leg. Gaz. 125 (1875), when the jury returns a verdict of homicide the coroner must go before a magistrate to swear out a warrant. See *Coroner's Duties*, 20 Dist. 502 (1911).

(*h*) *Marvin Shaft Inquest*, 3 Pa. C. C. R., 10 (1887).

(*i*) See *McFadgen v. Chester County*, 10 Pa. C. C. R., 124, s. c. 7 Mont., 149 (1891).

(*k*) *McFadgen v. Chester County*, 10 Pa. C. C. R., 124, s. c. 7 Mont., 149 (1891). *Coroner's Case*, 11 Phila., 387; 32 Legal Int., 142; 7 Leg. Gaz. 125 (1875). *Fayette County Deputy Coroner's Case*, 20 Pa. C. C. R., 641; 7 Dist., 568 (1898). *Commonwealth v. Higgins*, 3 Kulp, 269 (1889).

America than they were in England. Besides acting as substitute for the sheriff he also acts as substitute for the prothonotary, and by recent acts of assembly has been given duties in relation to morgues and the registration of deaths quite different from his ancient common law obligations.

Sect. 68. The statute of fourth Edward I (*l*) is said still to be in force in Pennsylvania (*m*). Perhaps, as qualified by Hemphill, J., in *McFadgen v. Chester County* (*n*), this is so. It is in force in so far as it is not inconsistent with our customs, form of government or laws (*o*). When we have said this however we have cut away the major portion of the powers conferred by the so-called statute (*p*).

The coroner's court is not a court of record in Pennsylvania (*q*). But the better opinion, however, seems to be that the coroner is still a judicial officer (*r*) and his inquest a judicial inquiry (*s*). It is to be presumed he acts in good faith (*t*). Indeed, the supreme court has gone so

(*l*) 1 Statutes of the Realm, 40 (1275); see Part I, Chapter III.

(*m*) *Ex parte*, Schulz, 6 Wharton, 272 (1840); *Pickett v. Erie County*, 19 W. N. C., 60, s. c. 3 Pa., C. C. R., 23 (1887); *McFadgen v. Chester County*, 10 Pa. C. C. R., 124, s. c. 7 Mont. 149 (1891); *Rentschler v. Schuylkill County*, 1 Schuylkill Legal Record, 289 (1880); *Allegheny v. McClung*, 53 Pa. St. 482 (1866); *Coroner's Case*, 11 Phila. 387; 32 Legal Int. 142; 7 Leg. Gaz. 125; 22 P. L. J., 151 (1875). See *Marvin Shaft Inquest* 3 Pa. C. C. R., 10 (1887); *Burn's Case*, 5 Pa. C. C. R., 549 (1888). See 3 Henry VII, *McFadgen v. Chester County* (*supra*), *Allegheny v. McClung* (*supra*), *Coroner's Case* (*supra*), and see the Report of the Judges, 3 Binney, 601 (1808).

(*n*) 10 Pa. C. C. R., 124; s. c. 7 Mont., 149 (1891).

(*o*) *Quære* whether the Act of 16 April, 1907, P. L., 93, repeals the whole Act of 4 Edward I, certainly so far as the former act is inconsistent with the latter it is repealed.

(*p*) Whether 4 Edward I, ever went through Parliament it has too often been held a statute in Pennsylvania for any one to dare to say it is not. However it probably is not.

(*q*) *Edwards v. Gimbel*, 202, Pa. St., 30 (1902); *Commonwealth v. Higgins*, 5 Kulp, 269 (1889).

(*r*) *Coroner's Case* (*supra*), *Allegheny v. McClung* (*supra*), *Rentschler v. Schuylkill County* (*supra*), *Watson v. Beaver County*, 9 Pa., C. C. R., 495, s. c. 27 W. N. C. 469 (1891); *Allegheny v. Watts*, 3 Pa. St., 462 (1846), *Commonwealth v. Higgins*, 5 Kulp, 269 (1889); *Weaver v. Northampton County*; 2 *Lehigh Valley*, 408 (1887); *Walker v. McKean County*, 31, Pa. C. C. R., 664; 15 *Dist.*, 577 (1905). *Uhler v. Northampton County*, 1 *Lehigh Valley*, 213 (1886).

(*s*) *Commonwealth v. Higgins* (*supra*), *Watson v. Beaver County* (*supra*), *Walker v. McKean County* (*supra*), *Uhler v. Northampton County* (*supra*).

(*t*) *Arnold's Case*, 4 Pa. J. L. R., 49 (1905); *Burnett v. Lackawanna County*, 9 Pa. C. C. R., 95 s. c.; 1 *Lack. Jur.*, 410 (1890); *Fayette County Coroner's Return*, 24 Pa. C. C. R., 498 (1900); *Lancaster*

far as to say that the coroner in the discharge of his duties is to use his own discretion, basing on these words the ruling that he cannot be fettered by having the county commissioners choose a physician for him and pay the physician a fixed salary (*u*). It would be absurd to heap up authority upon a proposition so obvious (*v*). Yet in *Cochrane's case* (*w*), the court said: "The Coroner is *to some extent* a judicial officer and may *largely* decide upon the question of necessity of an inquest." This remarkable statement of the law is only equalled by what follows. "But this determination should be a judicial one and based upon judicial reasons" (*x*), sound in itself, but utterly out of harmony with the doubting spirit of the opinion. What the court here sought to say has been boldly asserted elsewhere to the effect, namely, that the coroner must use his judicial discretion as to whether or not an inquest is necessary, but if the court find he erred in holding the inquest he shall have no fees (*y*); logic the force of which is convincing of the sinister effects of the fee system (*z*). So, too, we are told the judicial jurisdiction of the coroner extends to the investigation of the crimes of murder and manslaughter only (*a*). The apparent absurdity of such a statement is profound. If it is meant that the coroner is only to investigate where he knows the case is murder or manslaughter, the courts are

County v. Mishler, 100 Pa., 624 (1882); *McFadgen v. Chester County*, (*supra*), *Coroner's Inquests*, 1 Pa. C. C. R., 14 s. c. 3 Kulp., 451; 2 Del. Co., 446; 3 Lack. L. R., 70. *Miller v. Cambria County*, 29 Superior, 166 (1905); *Fayette County Coroners Inquest*, 30 Pa. C. C. R., 321; 35 P. L. J., 265; 9 Del. Co., 431 (1904). But this presumption may be overthrown by evidence, *Coroners' Inquests* (*supra*), *Fayette County Coroner's Return* (*supra*), *McFadgen v. Chester Co.* (*supra*), *Lancaster Co. v. Mishler* (*supra*), *Uhler v. Northampton Co.* (*supra*).

(*u*) For the coroner has given bond faithfully to perform his duties, *Allegheny County v. Shaw*, 34 Pa. St., 301, s. c. 7 P. L. J., 217, (1859), and see 12 W. N. C., 312; 14 Lanc. Bar, 101; 39 Legal Int. 459; 30, P. L. J., 361.

(*v*) See Part I, Chapter V, Sects. 40 and 41, also Chapt. V, Sect. 46.

(*w*) 12 Dist. 477, s. c. 27 Pa. C. C. R., 282; 2 Pa. J. L. R., 27 (1903).

(*x*) *Ibid.*

(*y*) *The King v. The Justices of Kent*, 11 East., 229, cited with approval, *Bender's Case*, 9 Pa. C. C. R., 664 (1890).

(*z*) For animadversion on this subject see Post., Chapter VI.

(*a*) *Bender's Case*, 9 Pa. C. C. R., 664 (1890).

manifestly wrong. As a general proposition this is not the law (*b*). It is indeed doubtful whether or no under the present conditions the approval of the court is necessary to the coroner's inquest (*c*). In Ralston's Petition (*d*) it appeared that the jury did not view the body and that *ex parte* affidavits were read to them, yet upon *certiorari* the court refused a *melius inquirendum* (*e*) and decided a *certiorari* was the improper method of procedure. It is reasonably certain that under the Pennsylvania theory of the office, the coroner ought to be "within his own jurisdiction * * * supreme and * * * the sole judge of his action * * * He must exercise his discretion wisely. But if he acts unwisely it is neither in the power of the court nor the commission to rectify such acts" (*f*). "The judgment of the justice (coroner) is entitled to some consideration; it cannot be brushed aside without some substantial reason" (*g*). We cannot but feel the justice of the remarks of Wickman, P. J., in *Watson v. Beaver County* (*h*), where he says, "a coroner when holding an inquest is in the fullest sense a judicial officer. He and his jury constitute a court to which, in the eye of the law, is attached considerable dignity." His finding is still equivalent to that of the grand jury (*i*), though at present it is never used as an indictment, parallel proceedings being invariably taken. The coroner's inquest is frequently of great importance in the administration of criminal justice (*k*).

Sect. 69. Just how far his powers as a court go is doubtful. He may compel the attendance of witnesses (*l*)

(*b*) See Post, Sect. 80.

(*c*) See *Smith's Case*, 4 Lanc. L. R., 302 (1887), yet it is there held the court cannot presume anything more than the return shows to justify the coroner in holding the inquest.

(*d*) 9 Dist., 514 s. c. 30 P. L. J., 410 (1900).

(*e*) We have no case where a *melius inquirendum* was granted in Pennsylvania.

(*f*) *Weaver v. Northampton County*, 2 Lehigh Valley, 408 (1887), and see Post, Sect. 80.

(*g*) *Arnold's Case*, 4 Pa. J. L. R., 49 (1905).

(*h*) 9 Pa. C. C. R., 495, s. c. 27 W. N. C., 469 (1891)

(*i*) *Coroner's Case*, 11 Phila., 387, s. c. 32 Leg. Int., 142; 7 Leg. Gaz., 125 (1875).

(*k*) *Lancaster v. Dern*, 2 Grant., 262 (1852); see *McFadgen v. Chester County*, 10 Pa. C. C. R., 124 s. c. 7 Mont. 149 (1891).

by attachment, if necessary, and may punish their contempts by fines and imprisonment (*m*).

In Philadelphia County the coroner is relieved by the act of 29 March, 1819 (*n*) from inquiring into the deaths of those who die in prison unless required by the inspectors thereof, except in cases of murder, suicide, manslaughter, or death caused by casualties. Section 2 of this act transfers this duty to the jail physician which gives an answer to the very natural query that rises in our minds; how the coroner is to tell, in cases of sudden death, whether there was murder or not unless he holds an inquest. It is evident he is to rely on the jail physician's report.

As we shall see later (*o*) the coroner is ordinarily to investigate crime, but his duties are still regulated by the statute of third Henry VII and it is therefore the duty of the coroner to inquire into deaths, 1. *ex visitatione die*, 2. *per infortunium*, 3. *felo de se*, 4. by the hand of an other known or unknown, and so in holding an inquest on a man killed by a falling derrick he was only doing his duty under the statute (*p*).

The ministerial duties of the coroner are the subject of a subsequent chapter.

Sect. 70. In Pennsylvania as in England the jurisdiction of the coroner is limited to his county, for similar reasons. The coroner is a county officer and his jurisdiction, therefore, limited to the county by which he is elected. But within his county the coroner has complete jurisdiction, even though the federal government had purchased

(*l*) Coroner's Case (*supra*) Commonwealth *v.* Higgins, 5 Kulp. 269 (1889).

(*m*) Coroner's Case (*supra*), but yet it has been said it is doubtful if he can force answers to his questions, Commonwealth *v.* Higgins, (*supra*), where it was said of a refusal "we are not prepared to say it is not an indictable offense." It is an obstruction of the coroner and should be indictable, *ante*. Rentschler *v.* Schuylkill County, 1 Schuylkill Legal Record, 289 (1880), says in cases of murder he can commit the offender without bail, but an order by the coroner to enter bail before another magistrate is beyond doubt irregular, Commonwealth *v.* Higgins (*supra*).

(*n*) Sect. 1, 7 Smith's Laws, 219.

(*o*) Post, Sect. 78.

(*p*) Per Reeder, J., Uhler *v.* Northampton, 1 Lehigh Valley, 213 (1886). See Arnold's Case, 4 Pa. J. L. R., 49 (1905); Rentschler *v.* Schuylkill County, 1 Schuylkill Legal Record, 289 (1880).

a tract of land to be used as an arsenal, the state reserving the right to serve its process on the tract. It was held that in such a case the coroner had power to hold an inquest upon the bodies of some seventy-two persons killed at the arsenal in an explosion (*q*).

Where one dies in one county and is brought into another county the coroner of the county where the body is brought may lawfully hold the inquest (*r*). But it has been said it would be proper for the coroner of the county where the person died to empanel a jury, take it into the other county, there view the body and then bring them back to their home jurisdiction to hear evidence (*s*). It is probable that if the coroner of the situs of the death demand it he alone has jurisdiction (*t*).

Where the stroke is given in one county and the death occurs in another, the law is the same in Pennsylvania as it was in England (*u*) but somewhat relaxed; the coroner of the county where the stroke is given has no jurisdiction, for no crime was committed and no death occurred in his county, but under the statute of 2 & 3 Edward VI, chapter 24, Sect. 2, which is still in force in Pennsylvania (*v*), the coroner of the county where the victim died has jurisdiction. It will no doubt be remembered that this statute does not apply to cases of death by misadventure, but it seems reasonable that the American law has expanded to take in the analogous case, and though it is an open question, the better opinion seems to be that in cases of misadventure the coroner of the county where the man died and he alone has jurisdiction.

Sect. 71. By two recent acts the duties of the coroner have been varied. The first limits his duties. The second extends them. The act of 30 March, 1897, P. L. 8 provides:

(*q*) Allegheny County *v.* McClung, 53 Pa. St., 482 (1866).

(*r*) Pickett *v.* Erie County, 19, W. N. C., 60; 3 Pa. C. C. R., 23 (1887). This was doubted, Rentschler *v.* Schuylkill County, 1 Schuylkill Legal Record, 289 (1880).

(*s*) Rentschler *v.* Schuylkill County (*supra*), Pickett *v.* Erie County (*supra*).

(*t*) Rentschler *v.* Schuylkill County (*supra*).

(*u*) See Part I, Chapter II, Sect. 24.

(*v*) Report of the Judges, 3 Binney, 620.

"Whenever the coroner shall have been called and views a dead body and decides that no inquest is necessary, he shall certify and return this fact as inquests are now returned, and for such services he shall receive the same fee and mileage as is now allowed by law for such view when followed by an inquest; such fee and mileage to be paid as provided by law where an inquest is held" (*w*). Under this act it has been held that the coroner must make this view alone, unaided by the assistance of witnesses (*x*) or of a physician. How far the coroner is called to go in prosecuting the preliminary inquiries necessary to enable him to make up his mind, it is difficult to say. It may be that in some instances an inspection of the body will be necessary; ordinarily, however, this duty will be fully met by taking the statement of the supposed cause of death from those who bring him the information (*y*). As to when the inquest ought to be held we shall observe the recent authorities in a subsequent chapter; suffice it here to say that in a recent decision (*z*) it was said that where the death results from natural causes (a matter which cannot possibly be determined but by judicial proceedings) no inquest should be taken (*a*), nor preliminary examination held. A more pernicious rule can hardly be conceived; upon the determination of a fact which was unknown when the duty to act arose, the coroner's fees depend; and if he guesses wrong, he is not to be paid. If the fee system is to exist at all, and it is submitted it should be at once abolished, the act of 1897 is a wholesome neutralizer of many of the evils of the system. But if such a rule as the recent cases lay down is to be enforced, the whole benefit of the act is destroyed. Two facts are noticeable in this

(*w*) It doubtless would be wise to provide justices compensation for like services, but such is not the law. *Re Missimer*, 20 Montgomery, 200; 3 Pa. J. L. R., 88; 18 York, 115 (1904).

(*x*) *Troutman v. Chambers*, 9 Dist., 533 (1900).

(*y*) *Burnett v. Lackawanna County*, 9 Pa. C. C. R., 95; 1 Lack. Jur., 410 (1890).

(*z*) *Fayette County Coroner's Return*, 24 Pa. C. C. R., 498 (1900); see *Metzger's Inquest*, 8 Dist., 573 (1899).

(*a*) *Fayette County Deputy Coroner's Case*, 20 Pa. C. C. R., 641, s. c. 7 Dist., 568; 46 P. L. J., 2 (1898), goes that far, and see *Burnett v. Lackawanna County* (*supra*.)

connection; first, the supreme court has not spoken on this point and the supreme court has always held a wholesome view of the office of coroner; second, these county court cases expressly misread the act of 1897, for the very purpose of that act was to provide relief to the coroner whose duty it is to act when called upon in cases where he is unnecessarily called upon to act, as where the death was the result of purely natural causes, giving rise to no suspicions, and was neither sudden nor violent.

Sect. 72. The act of 1 May, 1905, P. L. 335 provides for the registration of deaths. The registrar shall notify the coroner of all cases where death occurred under suspicious circumstances.

"And in the city and county of Philadelphia it shall be the duty of the coroner to hold an inquest on the body of any deceased person who shall have died a violent death or whose death shall be sudden, if said death shall be after an illness of less than twenty-four hours and no physician shall have been in attendance within said time, or if suspicious circumstances shall render the same necessary, which said suspicion shall first be sworn to by one or more citizens of said city. And any coroner whose duty it is to hold an inquest on the body of any deceased person and to make the certificate of death required for a burial permit shall state in his certificate the nature of the decease or the manner of death, and if from external causes or violence whether (probably) accidental, suicidal or homicidal, as determined by the inquest and shall in either case furnish such information as may be required by the state registrar to properly classify the death."

The question at once arises in our minds as to the constitutionality of this act and we cannot but feel that it is doubtful at the best.

The act of 16 April, 1907, P. L. 92 takes away from the coroner the care of the body, and charges the police or health authorities, as the case may be, with the duty of caring for the body of the deceased. But at least so far as the care of the body after the inquest by the coroner is concerned, the act is only in affirmance of the common

law, for after the inquest the coroner had nothing to do with the body except to issue his burial certificate.

Sect. 73. The act of 1722 (*b*), which established the supreme court, gives it power to examine, correct and punish the contempts, omissions and neglects, favors, corruptions and defaults of all or any of the coroners. This act puts the sanction of the coroner's office in the supreme court. There is also an act of 1779 (*c*), probably obsolete, regulating the fines and penalties to be imposed. These acts may be safely disregarded (*d*); there are two thoroughly American remedies which should be resorted to in this day and age. The coroner may be impeached like any other county officer. He is liable on his official bond for all damage resulting from his misdeeds. These remedies are superior to any that may have been created by statutes now probably obsolete and form the real sanction of the office of coroner.

The duty upon the part of the coroner to act when notified so to do is no less imperative than formerly. He may under the act of 1897 (*e*) report that no inquest is necessary, but should he refuse to act where a felony had been committed, he could be fined at the discretion of the court (*f*). If he imposes an improper inquisition upon the jury he may be committed (*g*). If he returns the wrong presentment he may be indicted.

(*b*) Act of 22 May, 1772, 3 Statutes at Large, 298, 303.

(*c*) 16 March, 1779, Sect. 1; 9 Statutes at Large, 320.

(*d*) Aside from the constitutional limitations in the original jurisdiction of the Supreme Court.

(*e*) P. L., 8.

(*f*) 1 and 2 P. and M., c. 13, Lord Buchhurst's Case, 1 Keble, 280 (1662).

(*g*) *Ante*, Sect. 52, note (*a*).

CHAPTER IV.

CORONERS' DEPUTIES.

Sect. 74. We have already seen (a) that the office of coroner is a judicial one and that in his judicial duties he cannot act by deputy (b). In certain cases, however, the coroner cannot hold an inquest and the duty falls upon the justices of the peace to inquire, but, as we have observed, the investigation so made is not properly speaking an inquest. In Pennsylvania the *melius inquirendum* has never been used and the inquiry by the justices of the peace without view of the body must also have been very rare, although it was early surmised that they had authority in the proper case (c).

In 1841 one Samuel Speece, a deaf and dumb man, was run over by some of the cars of the Philadelphia and Reading Railway near Limerick, in Montgomery County. John Dismant, one of the justices of the peace for the county, held an inquest over him *super visum corporis* and one Schulz was found by the jury to have caused his death. Schulz was arrested and *habeas corpus* proceedings were begun at once. The case was ably argued in the supreme court, which decided on the authority of *Commonwealth v. Brock*, an unreported case decided in the supreme court in 1814, in Luzerne County by Gibson, C. J. (d), that the justice of the peace may not hold an inquest, *super visum corporis* (e).

It would seem that the justices of the peace of the commonwealth had long forgotten the distinction between

(a) Part I, Chapter V, Sect. 41.

(b) *Ex parte*, Schulz, 6 Wharton, 269 (1841); see *Pickett v. Erie Co.*, 19 W. N. C., 60, s. c. 3 Pa. C. C. R., 23 (1887), *Reitlinger's Case*, 2 Kulp. 127 (1882).

(c) *Ex parte*, Schulz, 6 Wharton, 269 (1841).

(d) In that case a new trial was granted in a capital case because the inquisition submitted to the jury was held by a justice of the peace and was therefore *coram non judice*. This was probably the first new trial ever granted in a capital case in Pennsylvania, per Gibson C. J., in *ex parte* Schulz, 6 Wharton, 269 (1841).

(e) *Ex parte*, Schulz, 6 Wharton, 269 (1841), and see *Pfout's Case*, 7 Pa. C. C. R., 265 (1889) and *Metzger's Inquest*, 8 Dist., 573 (1889).

the circumstances under which they were to inquire concerning sudden deaths and those under which the coroner alone had jurisdiction, and claimed what one might almost call a prescriptive right to hold the coroner's inquest for him under all circumstances. The decision was a great surprise to the justices and the community at large. The commonwealth was now met with a flat removal of the power of the justice to hold inquisitions *super visum corporis*. To meet this situation the act of 1841 was passed (f).

This act reads as follows:

"In all cases where by law the coroner of any county is required (g) to hold an inquest over a dead body it shall be lawful for a justice of the peace of the proper county to hold the same where there is no lawfully appointed coroner (h), or he is absent from the county, unable to attend, or his office is more than ten miles (i) distant from the place where the death occurred or the body found, and the justice shall have like power to select, summon, and compel the attendance of jurors and witnesses (k), and shall receive like fees and tax like costs and the inquest shall have like force and effect in law, *provided* that no fees or costs shall be allowed or paid said justice or inquest until the proceedings are submitted to the court of quarter sessions of the proper county and the said court shall adjudge that there was reasonable cause for holding said inquest (l) and approve the same" (m).

(f) Metzger's Inquest (*supra*). The decision is dated Feby. 16, 1841, the act May 27th.

(g) See Burn's Case, 5 Pa. C. C. R., 548 (1881); Pfout's Case, 7 Pa. C. C. R. 265 (1889); Coroner's Inquest, 28 Pa. C. C. R. 428 (1903).

(h) Coroner's Inquest, 28 Pa. C. C. R., 428 (1903).

(i) The court will take judicial notice of the distance of places from the county seat, *Pickett v. Erie Co.*, 19 W. N. C., 60, s. c. 3 Pa. C. C. R., 23 (1887), but see *contra*, *Cochrane's Inquest*, 12 Dist., 477, s. c. 27 Pa. C. C. R., 282; 2 Pa. J. L. R., 27 (1903).

(k) The act presuming the coroner has a right to summon witnesses we may assume he has that power, *Coroner's Case*, 11 Phila., 487; 32 L. I., 142; 7 Leg. Gaz., 125 (1875).

(l) This clause gives rise to the pernicious system of refusing fees because the cause for holding the inquest is not approved by the court; see Post, Sects., 78 to 93.

(m) Act of 27 May, 1841, Sect. 15, P. L., 404, an excellent annotation to this act may be found in *Reitlinger's Case*, 2 Kulp, 127 s. c. 14 Lanc. Bar., 123; 3 York, 101; 11 Luz. Leg. Reg., 157 (1882).

The act is so plain that it speaks for itself, but it creates a system which is so prenicious that the act has been the subject of numerous decisions without removing the grounds out of which innumerable cases are bound to arise in future (*n*). These decisions have laid down the law as expressed by the statute and interpret it to mean that the justices of the peace have no authority to act in place of the coroner except by virtue of the act (*o*) and under the act they are only called upon to hold an inquest where the coroner is required to do so (*p*), and even then it is optional with the justice whether he act or not (*q*), for the words of the act are that it shall be lawful for the justice to hold the inquest. But he is only to hold it, first, where there is no lawfully appointed coroner (*r*), second, or where the coroner is absent from the county or unable to attend at the time and place where the inquest must be held (*s*), or third, where the office of the coroner (*t*) is more than ten miles distant from the place where the death occurred or the body was found (*u*). It is, moreover, to be observed that the jurisdiction of the justice is substitutional and therefore he has no jurisdiction where the coroner or his deputy has actually taken cognizance of the case (*v*). But once the justice has started his inquest

(*n*) The difficulty is largely removed by the deputy coroners act *vide*, Post, Sect. 76.

(*o*) Coroner's Inquests, 28 Pa. C. C. R., 428 (1903); Approval of Coroner's Inquests, 7 Dist., 566, s. c. 20 Pa. C. C. R., 660; 2 Docket, 65, (1896); Lee's Case, 9 Pa. C. C. R., 474 (1891); Pfout's Case, 7 Pa. C. C. R., 265 (1889).

(*p*) Coroner's Inquests, 28 Pa. C. C. R., 428 (1903); Burn's Case, 5 Pa. C. C. R., 548 (1888).

(*q*) Coroner's Inquests, 28 Pa. C. C. R., 428 (1903); Pfout's Case, 7 Pa. C. C. R., 265 (1889); Burn's Case, 5 Pa. C. C. R., 548 (1888).

(*r*) Pfout's Case (*supra*), Lee's Case (*supra*), Approval of Coroner's Inquest (*supra*), Coroner's Inquests (*supra*).

(*s*) *Ibid*.

(*t*) Article XIV, Sect. IV, of the State Constitution does not require the coroner to keep his office in the county town, as it does other county officers.

(*u*) Pfout's case (*supra*), Lee's Case (*supra*), Approval of Coroner's Inquests (*supra*), Cochrane's Inquest, 12 Dist., 477, s. c. 27 Pa. C. C. R., 282; 2 Pa. J. L. R., 27 (1903); Coroner's Inquest (*supra*).

(*v*) Arnold's Case 4 Pa. J. L. R., 49 (1905), even where the coroner only telephoned he was coming.

the coming of the coroner does not oust (*w*) his jurisdiction, and if the coroner afterwards takes an inquest it is absolutely void (*x*).

The inquest by the justice of the peace being purely a creature of statute, the return must show on its face that the justice had jurisdiction (*y*) by reason of the facts being within one of the provisoes of the statute (*z*). It cannot be presumed (*a*). The justice's returns of the facts upon which his jurisdiction rests is, however, conclusive; but it is not conclusive of the necessity of holding the inquest (*b*).

Once the jurisdiction of the justice has attached, he is to be governed by the same rules and have the same rights and powers, duties and liabilities as the coroner (*c*). This is the general rule as laid down by the weight of authority, but a better statement of the law seems to be found in two cases. In *re Missimer* (*d*) the court said, "the act of 1841 does not invest the justice of the peace with all the functions of coroner * * * the justice does not become

(*w*) *Ibid*.

(*x*) Bracton, f 121b, Statute 4 Edward I, Sect. 2; 1 Statutes of the Realm, 40 (1275). In force in Pennsylvania Report of the Judges, 3 Binney, 601.

(*y*) *Reitlinger's Case*, 2 Kulp. 127; 14 Lanc. Bar, 123; 3 York, 101; 11 Luz. L. Reg. 157 (1882); *Coroner's Inquest*, 1 Pa. C. C. R. 677; s. c. 2 Del. Co. 446-475; 3 Kulp. 451; 3 Lanc. L. R. 70 (1885), which follows *Coroner's Inquest*, 1 Pa. C. C. R. 14 (1885); *Marvin Shaft Inquest*, 3 Pa. C. C. R. 10 (1887); *Pfout's Case*, 7 Pa. C. C. R. 265 (1889); *Lee's Case*, 9 Pa. C. C. R. 474 (1891); *Approval of Coroner's Inquests*, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896); *Metzger's Inquest*, 8 Dist. 573 (1889); *Coroner's Inquest*, 28 Pa. C. C. R. 428 (1903); *Grubb's Case*, 3 Pa. J. L. R. 78 (1904); but where jurisdiction does not appear on the face of the inquest it may be sent back to the Justice for amendment, *Coroner's Inquest*, 1 Pa. C. C. R. 14; 3 Kulp. 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885), and the Court will take judicial notice that one town is more than ten miles distant from another, *Pickett v. Erie County*, 19 W. N. C. 60; 3 Pa. C. C. R. 23 (1887), *contra*.

(*z*) The Justice may have other powers than those set out in the act, though these decisions are wholly inconsistent with the existence of such powers.

(*a*) *Grubb's Case*, 3 Pa. J. L. R. 78 (1904).

(*b*) *Reitlinger's Case*, 2 Kulp. 127; s. c. 14 Lanc. Bar, 123; 3 York, 101; 11 Luz. L. Reg. 157 (1882).

(*c*) *Coroner's Inquests*, 28 Pa. C. C. R. 428 (1903); *Reitlinger's Case* (*supra*), *Lee's Case* (*supra*), *Coroner's Inquests*, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451, 2 Del. Co. 446, 3 Lanc. L. R. 70 (1885); *Coroner's Inquests*, 1 Pa. C. C. R. 667; 2 Del. Co. 475 (1885); *Pfout's Case*, 7 Pa. C. C. R. 265 (1889); *Approval of Coroners' Inquests*, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896).

(*d*) 20 Mont. 200; 3 Pa. J. L. R. 88; 18 York, 115 (1904).

a coroner, but in certain specific cases performs the same duties that are required of the coroner. * * * How, then, can it be said that the giving of additional powers to the coroner confers like powers on the justice of the peace?" (e).

Sect. 75. When we consider this act in the light of our understanding of the duties of the justice of the peace in England a curious question arises upon which there are no decided cases. Should the body not be found, of course the coroner cannot hold his inquest (f) for the coroner's inquest, as we have seen, must be *super visum corporis* (g). In England, under such facts, it became the duty of the justices of the peace or of oyer and terminer or of the King's Bench to enquire, or the King's Bench might appoint a special commission to enquire or the grand jury might enquire (h); but these enquiries are not, properly speaking, "inquests" (i). In view of the act of 1841, it is doubtful whether or not the justices of the peace may act at all in Pennsylvania, except under its provisions, upon the principle that it is the only legislation upon the justice's powers in such cases and *unius expressit alterius exclusit*, although before the act he was thought to have like powers with the justice in England (k). Ordinarily it might be argued that an act passed expressly widening the duties of an office could not be held to narrow them, but this is met with innumerable authorities, dicta purely *obiter*, to be sure, to the effect that the justice's only power concerning inquests is that conferred by the act of 1841. These decisions are, to be sure, of little value or authority; there is not one by an appellate court and in not one is the ancient power of

(e) And see also Coroner's Inquests, 1 Pa. C. C. R. 14; 3 Kulp. 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885): "I do not think that justices of the peace have the same right to exercise the coroner's judicial functions as the coroner himself has." So if the neighbors will pay for an inquest by a justice he must take it, *sed quare*.

(f) 27 Assize, 55; 4 Blackstone's Commentaries, 274; 2 Hawkins's Pleas of the Crown, 42.

(g) 1 Blackstone's Commentaries, 348.

(h) Stanlack's Case, 1 Ventris, 182; s. c. 1 Modern, 82 (1671); Anonymous, 1 Ventris, 352 (1680), and see 2 Roll's Abridgment, 96 e. 30; 1 Hawkins's Pleas of the Crown, c. 27, Sects. 12 and 13.

(i) 2 Hawkins's Pleas of the Crown, c. 9, Sect. 23.

(k) *Ex parte* Schulz, 6 Wharton, 269 (1841).

the justices to hold inquests not *super visum corporis*, where the body is missing, mentioned. These things would of themselves detract from the value of the decisions, but they are so sweeping and so notoriously ill-considered in other respects that we are almost tempted to doubt their authority in all respects. Yet even so we are left in doubt as to whether or not a justice has a right to enquire under facts such as we are considering. If the justice may not inquire the justices of oyer and terminer may, but it is doubtful whether or not a court of oyer and terminer would inquire; it has no right to delegate its power. The supreme court as standing in the place of the Court of King's Bench might seem to have power to inquire or to appoint a commission to inquire, but in view of the fact that its original jurisdiction is expressly stipulated and limited by the constitution of 1874 (1) it could, of course, not exercise the power to inquire, though it might appoint a commission. Of course the grand jury could inquire, but the grand jury's inquest is not comparable with that of the coroner. The purpose of the grand jury's quest is utterly different from that of the coroner's as we shall see later. The grand jury, in all probability, would not inquire unless crime were strongly suspected, whereas, as we shall see later, some cases require the action of the coroner even though no crime be suspected. In such cases we are forced to conclude the justices of the court of oyer and terminer are the only authority in which is vested the power to inquire.

Sect. 76. Ten years after the decision of *ex parte* Schulz which gave rise to the system of inquests by a justice of the peace, still another method of meeting the deficiency of coroners in Pennsylvania was devised by the legislature. By the act of 1852 (m) the coroner of Lancaster County was empowered to appoint any number of deputies to act for him in that county. This act was the opening wedge. A decade later the act of 1841 was repealed as to Northampton County and deputies were authorized to

(1) Article V, Sect. 3.

(m) 3 April, 1852, Sect. 20, P. L. 246.

be appointed (*n*). This act was extended to other counties (*o*). In 1864 an act was passed giving the coroner of Chester County limited authority as to the appointment of deputies (*p*). In 1889 an attempt was made to extend the system of deputy coroners over the entire state (*q*). Grave doubts were expressed as to the constitutionality of the act (*r*). In 1891 the case of *Commonwealth v. Grier* brought up squarely the constitutionality of the act of 1889. A deputy coroner of Allegheny County, alleging that he had been both generally and specially deputized to act for the coroner both in general and for this particular case, asked for his fees which the county comptroller refused to certify. The deputy took the case to court. The question at once arose whether or not the deputy coroner is a county officer. The court said:

"The act of 1889 says that the coroner may appoint any number of persons to act for him *in his place and stead*, that is, that the deputy may do whatever the coroner may do. This includes the power to act as the substitute for the sheriff, and wherever the discretion and judgment of the coroner are required the deputy is to have the power to exercise them as if he were the coroner. The fact is that the deputy was generally authorized to act and the fact that he was authorized to act in this particular case does not,

(*n*) In such sections as the coroner deems necessary, Act of 1 May, 1861, Sects. 1 and 2, P. L. 560.

(*o*) To Schuylkill by the Act of 14 Feby., 1863, Sect. 1 P. L. 30; to Bucks by the Act of 21 March, 1873, Sect. 1, P. L. 348.

(*p*) Act of 17 March, 1864, Sect. 1, P. L. 21, and see the Act of 22 March, 1867, P. L. 532, as to Phila. County, and the Acts of 30 Jan., 1866, P. L. 6, and 28 June, 1871, P. L. 1380, as to Schuylkill and Mercer Counties. The Act of 19 April, 1856, P. L. 470, provides that no justice in Allegheny County shall hold an inquest unless it is impracticable to obtain the personal attendance of the coroner after notice given to him, or reasonable and proper efforts made to give him notice of the death.

(*q*) Act 9 May, 1889, P. L. 162. But it has been said this act does not apply to counties having local laws, *Grove's Case*, 26 Pa. C. C. R. 449 (1900).

(*r*) *Commonwealth v. Grier*, 9 Pa. C. C. R. 444 (1891); *Fogerty v. Schuylkill County*, 13 Pa. C. C. R. 454 (1893); *Eckard v. Fayette County*, 5 Dist. 371; s. c. 43 P. L. J. 461 (1896); *Fayette County Deputy Coroner's Case*, 7 Dist. 568; 20 Pa. C. C. R. 641; 46 P. L. J. 2 (1898); *Troutman v. Chambers*, 9 Dist. 533 (1900), as to counties having over 150,000 inhabitants. The second section, which is still in force, is unconstitutional, *Commonwealth v. Grier (supra)*.

for the purposes of this case make any difference. If then he has all the powers of the county coroner, he is a county officer, he cannot be compensated by fees, for the constitution requires that he shall be paid a salary; besides he must be elected. But suppose he is not a county officer then he must be either a deputy or clerk; if he is either he cannot be compensated by fees, for the constitution expressly forbids that, as do the acts of assembly. Salaries are stated sums for stated periods and cannot be made synonymous with fees, and besides, in the large counties like Philadelphia and Allegheny the coroner could appoint an indefinite number of deputies whose fees would eat up all the excess over the sum sufficient to pay salaries and so defeat the very object of the act, which is to pay salaries out of the fees and leave the balance as a fund for the benefit of the taxpayers. Again, under this system it would be possible for the deputy to secure a larger income than the coroner himself. But the main case against the act is that its title does not clearly express the subject-matter covered by it."

The title of the act is "An act to provide for the appointing of deputy coroners in the several counties of this Commonwealth." "Now what notice did the title of the act of 1889 give to counties of over 150,000 people that deputy coroners were to be paid by fees and that the whole system fixed by the act of 1876 was changed as far as coroners were concerned? No one hearing the title read would receive any notice of how they were to be appointed or paid. But another difficulty about the act is, does it apply to Allegheny County at all? Does it not apply only to such counties where coroners are and were at the time paid by fees?" And then he quotes the second section of the act to show that it means only those counties where the coroner is paid by fees. "The same shall be paid from such funds and at such places as such fees of the said coroner are now by law payable." In counties which have over 150,000 people there are no fees payable to the coroner, so how can there be any for the deputy. The language can apply to counties having less than 150,000, but

it is very ambiguous when applied to counties having more.

"We are of opinion that the proviso of the act of 1889 applies only to counties already having deputies and that this county is not acting under special laws."

To remedy the flaws thus found in the act of 1889, the act of 1893 (*s*) was passed; it provides:

"Sect. 1. That from and after the passage of this act the regularly elected and duly qualified coroner in counties of this commonwealth may appoint one or more deputies to act in his place and stead as he may deem proper and necessary.

"Sect. 2. Such deputy or deputies so appointed shall have like powers to hold inquests, to select, summon and compel the attendance of jurors and witnesses and to administer oaths."

In the first place it is to be noticed that this act does not supply or repeal the second section of the act of 1889, but only the first section (*t*). The question raised in *Commonwealth v. Grier* (*u*) does not seem to have been answered. The question still remains, is or is not the deputy coroner a county officer? If he is, the act is unconstitutional and void (*v*), and it seems impossible to escape the conclusion that the deputy coroner is a county officer.

There is a question which necessarily arises under the act of 1893, and that is in how far does it effect the act of 1841. In *Reitnauer's Inquest* (*w*) the question arose whether where the coroner has appointed deputies and divided up the county so that no place is more than ten miles from the office of any deputy coroner (and of these facts the court will take judicial notice) the justice of the peace is ousted from his jurisdiction? Endlich, J., said:

(*s*) Act of 6 June, 1893, Sects. 1 and 2, P. L. 330.

(*t*) Fayette County Deputy Coroner's Case (*supra*).

(*u*) 9 Pa. C. C. R. 444 (1891).

(*v*) See Constitution of 1874, Article XVI, Sect. 1; 1 Purdon's Digest (13th Edition), 203; *Commonwealth v. Dauphin County Commissioners*, 23 Pa. C. C. R. 646; s. c. *sub non* *Commonwealth v. Smith*, 9 Dist. 350; 3 Dauphin, 159; 7 North, 255; 6 Lack. L. N. 151 (1900); *Porter v. Shields*, 200 Pa. St. 241 (1901).

(*w*) 14 Pa. C. C. R. 46 (1894).

"I can find no warrant for an affirmative answer to that question. It is a general rule of statutory interpretation that an enactment will not be held to change the existing law unless the intention to do so be disclosed with irresistible clearness. * * * The act of 1889 contains no expressions which as affecting the right of a justice of the peace to hold an inquest and be paid for it, under the existing laws, satisfy this test. Though there be a deputy coroner in a district and though he be entitled to act in the place and stead of the coroner, he is, nevertheless, not the coroner, but only his deputy. Even the legislature cannot make that a fact which is not a fact. * * * No doubt it may oust the justice's jurisdiction where the office of a deputy coroner is accessible within any given number of miles. But it has not done so." (x).

But while the legislature has no power to make that a fact which is not a fact, the act of 1841 has in some counties (y) become practically obsolete.

The fees for the inquests held by a justice of the peace are only allowable where the court approves the inquest so that the court has within its discretion the refusal of fees to such an extent as to make it practically impossible for the justice to secure fees and so crush the inclination of the justices to hold inquests. By this means the more logical method of managing inquests throughout the county has been restored and we are where England was in the time of King Edward I, there being several, an undeterminate number, of coroners in every county, except that we call all but one of them deputy coroners and that they are not elected.

(x) This case is purely *obiter* and refuses to decide whether or not the act applied to Berks County, nor whether there could be a general and a special deputation under both acts as was claimed.

(y) Montgomery, for example. See article, Philadelphia Evening Bulletin, August 14, 1906.

CHAPTER V.

THE CORONER'S JURY.

Sect. 77. As in England, so in Pennsylvania, the coroner is aided in his investigations by a jury. The first question that arises in our minds is how does the coroner choose his jury. There are elaborate provisions in the law for the selection of juries to try issues of fact in the courts of this commonwealth, but these do not apply to the coroner's jury for two reasons: first, because the coroner's jury does not try an issue of fact, but investigates a fact, there is no matter before it asserted on the one side and denied on the other; the duty of the coroner's jury is to investigate circumstances and declare what truth the evidence before them establishes. But were we to grant for the sake of argument that the coroner's jury does try an issue of fact there is a second reason why the laws relating to the selection of jurors do not apply to the coroner's jury; that reason is this, the coroner has long since ceased to be in Pennsylvania what in England he always has been, to wit, in the strictest sense, a court. It therefore appears that in Pennsylvania the coroner is at liberty to choose his jury as seems to him right and proper. In Philadelphia County the coroner reserves the right to select any person he pleases without regard to residence or citizenship. But in practice he keeps a list of applicants for places on the jury and makes out his jury from that list. The right to disregard residence and citizenship is too broad. The statute of fourth Edward the first, requires that the jury be of the four next vills; while that can hardly be said to apply in Pennsylvania to-day there is no doubt that under the common law, as we have seen, the jury must be men of the county. Besides they must be *legalis homines*, and aliens are not such. These points, however, never have been raised.

In practice the coroner's jury in Philadelphia always is a jury of men of the county.

In Pennsylvania the coroner's jury always has consisted of six (a). They are not challengeable by either party (b), but, as we have observed in the case of the jury in England it is the wiser part for the coroner to allow challenges by either party, for cause, for it is better that the jurors be challenged than that the inquest be quashed (c). It is true that since the abolition of outlawry (d) the principal cause for challenge to coroner's jurors, *i. e.* that they are not good and lawful men, is minimized, but the old precaution is still wise for aliens and convicts (e) are not *probi et legales*. Chosen as they are it is presumed, as in all modern juries, that the jurymen know nothing of the case to be investigated. If they do, it is their duty to so state to the coroner and to become witnesses at the inquest. Thus purged, the jury is to be sworn or affirmed (f) *super visum corporis* (g) by the coroner himself or his deputy (h) well and truly to inquire into the matter pending before them and a true verdict to render, according to the evidence. It is their privilege to call back any witness who has testified before them to ask any question elucidatory of their inquiry and they are entitled to the opinion of the coroner upon matters of law (i). If they refuse to render a verdict they may be fined (k). What is to happen if they do not agree is uncertain. In practice they never do. Until they agree the inquest is incomplete and therefore not a valid inquest; the coroner, therefore, has

(a) *Ex parte* Schulz, 6 Wharton, 269 (1841); Reitnauer's Case, 14 Pa. C. C. R. 46 (1893). The Act of 16 May, 1857, Sect. 1, P. L. 536, is only declaratory of the common law.

(b) Withipole's Case, Croke's Charles, 134. Jones, 198-9; Ley., 81 (1628).

(c) *Ante*, Sect. 51.

(d) Outlawry still exists in Pennsylvania, but it is practically abolished.

(e) Certainly those convicted of perjury.

(f) Umfreville's *Lex Coronatoris*, 187; Jervis on Coroners, 257; and see Stoeker's Inquest, 3 Kulp, 487 (1890).

(g) Lest much of the evidence be taken with the jury not under oath.

(h) Since the Deputy Coroners' Act of 1893, or by the justice of the peace where he acts in place of the coroner.

(i) Jervis on Coroners, 258.

(k) Travener's Case, 3 Bulstrode, 173.

the right to set the jury aside for refusing to agree and to hold another inquest (*l*). But there is no method of forcing an agreement.

The coroner is bound to accept whatsoever presentment the jury makes (*m*). He cannot stop the course of an inquest once begun unless the jury return that they cannot agree. He cannot fine them for not finding according to the evidence (*n*). If they choose to assume the responsibility of violating their oaths, he is bound to accept their verdict and has no right, as was recently done in Philadelphia, to force them to bring in a verdict in accord with his ideas of the facts and the law.

In the famous Lewis murder case which attracted so much of the public attention at the time, the coroner refused to accept the verdict of the jury and sent the case back to them for further consideration. This was beyond doubt an abuse of his legal authority; they, not he, were to render the verdict. He was not a judge of the facts. After sending the case back twice he accepted the third verdict directed against two parties who were, it would seem, innocent. *Habeas corpus* proceedings were brought and the court seems to have taken the view that the third presentment of the jury was invalid. It is a grave pity that, in view of the total absence of Pennsylvania authority on this subject the court neglected this opportunity of expressing an opinion upon the facts involved, for we are left in ignorance as to whether the ground for the dismissal of the suspects was the invalidity of the jury's third finding, the alleged principle that a coroner's inquest amounts to nothing, or the evidence produced at the hearing. The court dismissed the defendants without bail (*o*).

(*l*) For the first is void, therefore the second good.

(*m*) Smith's Case, Comberback, 383 (1697); Alderman's Case, 2 Levinz, 152; s. c. *sub nom* Rex v. Alderman, 1 Ventris, 278; *sub nom* Anonymous, Freeman, 419-433, made law in Pennsylvania by *ex parte* Schulz, 6 Wharton, 269 (1841).

(*n*) For it is within their discretion; Jervis on the Law of Coroners, 45.

(*o*) Whereupon both suspects brought damage suits against the coroner and these are still pending.

Of course the old question remains whether or not the jury have a right to find contrary to their instruction, but in accordance with moral right. A discussion of this point properly belongs to a work on juries in general. They are instructed by the coroner but there is no method of punishing them for an improper finding.

CHAPTER VI.

THE CORONER'S INQUEST—WHEN HELD.

Sect. 78. It is the duty of the coroner in proper cases to ascertain with as much precision as possible the cause of death (*a*). The investigation thus made necessary is the inquest. It is sometimes said to be the first motion of the machinery of the law to punish homicide (*b*). The object of the inquest in Pennsylvania is different from the object thereof in England prior to the settlement of this country. There the questions of deodands and forfeitures played an important part; here the matters relating to the king's revenue have no application (*c*). The object of the inquest has been defined by the supreme court to be "to seek information and obtain and secure evidence in case of death by violence or other undue means" (*d*). Many of the more recent county court decisions have followed the definition thus laid down, (*e*) but we find considerable divergence from it. The object has been said to be to seek information (*f*) which will lead to the detection of crime (*g*) or, as it is said, to detect and aid in the punishment of crime (*h*) or fix the responsibility for the crime on some one (*hh*).

The rule laid down by the supreme court seems to be plain, but the application of the rule has been difficult

(*a*) Lancaster *v.* Dern, 2 Grant, 262 (1852).

(*b*) Weaver *v.* Northampton County, 2 Lehigh Valley, 408 (1887).

(*c*) Grubb's Case, 3 Pa. J. L. R. 78 (1904).

(*d*) Ralston's Petition, 9 Dist. 514; s. c. 30 P. L. J. 410 (1900); Grubb's Case (*supra*); Jones' Case, 1 Pa. C. C. R. 19 (1885); Lee's Case, 9 Pa. C. C. R. 477 (1891); Witmore's Case, 3 Dist. 699; s. c. 14 Pa. C. C. R. 464 (1894); Metzger's Inquest, 8 Dist. 573 (1890); Coroner's Inquests, 28 Pa. C. C. R. 428 (1903); Winger *v.* McKean, 11 Dist. 555; s. c. 26 Pa. C. C. R. 126; 8 Del. Co. 431; 18' Mont. 88 (1901); Fayette County *v.* Batton, 108 Pa. St. 594 (1885).

(*f*) Grubb's Case (*supra*), Ralston's Petition (*supra*).

(*g*) Grubb's Case (*supra*); Watson *v.* Beaver Co., 9 Pa. C. C. R. 495; s. c. 27 W. N. C. 469 (1891); and see McFadgen *v.* Chester Co., 10 Pa. C. C. R. 124; s. c. 7 Mont. 148 (1891); Ralston Petition (*supra*).

(*h*) McFadgen *v.* Chester Co. (*supra*); Witmore's Case (*supra*); Weaver *v.* Northampton County, 2 Lehigh Valley, 408 (1887).

(*hh*) Winger *v.* McKean (*supra*).

and has led to considerable confusion. Thus it has been said "where life has been feloniously destroyed, as evidenced by wounds or other circumstances, it is important to secure such evidence of identity and description of the cause and manner of death that may be available on the trial of the party charged with the felony" (*i*). And so, "when death has been sudden and the cause unknown and circumstances create the suspicion of guilt, it is important to obtain information that may lead to the arrest of the supposed guilty party or that may relieve him from the suspicion of guilt" (*k*). In order to understand the proper application of the definition that the supreme court has given us, we must in the first place bear in mind two things; first, the verdict of the coroner's jury has come in this state to have less and less weight until now it has no legal effect (*l*), and second, the jurisdiction of the coroner to-day extends only to the investigation of cases where the crimes of murder or manslaughter may have been perpetrated (*m*).

The definition interpreted in this light shows that not only are cases of felony comprehended but cases of criminal negligence should also be investigated (*n*).

From the definition certain corollaries follow and these two were laid down by the court in *Lancaster County v. Mishler* (*o*). "If there be reasonable ground to suspect 'the death was caused by violence or other undue means' it becomes the duty of the coroner to act. If he has no ground for suspecting that the death was not a natural one it is a perversion of the whole spirit of the law to compel the county to pay him for such services." These corol-

(*i*) Burns Case, 5 Pa. C. C. R. 548 (1888).

(*k*) Metzger's Inquest, 8 Dist. 573 (1899), and see Burns Case (*supra*), and Post, Sect. 83, note (*f*).

(*l*) Ralston's Petition, 9 Dist. 514; s. c. 30 P. L. J. 410 (1900).

(*m*) It is wrong to say, as was said in Bender's Case, 8 Pa. C. R. 664 (1890), that the coroner's jurisdiction extends only to the investigation of the crimes of murder and manslaughter, for that limits his powers to cases where the crime has been committed, which is, as we shall see, altogether too narrow. The language of Bender's Case is very careless and ill considered.

(*n*) *Miller v. Cambria County*, 29 Superior Court, 166 (1905).

(*o*) 100 Pa. St. 624 (1882).

laries are perfectly correct, but their application is as difficult as that of the definition itself. But this will be considered later. With all due respect to the definition laid down by the supreme court, it is submitted that a definition much more easy of application is, that the object of holding an inquest is to ascertain whether a crime (*p*) has been committed (*q*), or criminal negligence has caused death (*r*), and then how and by whom the injury was inflicted (*s*), not as part of the proceedings leading to the conviction of the culprit but as a separate institution for the protection of the community that the innocent may be exonerated and the responsibility, if any, for the death, located. Perhaps the best working definition the courts have given us appears in *Walker v. McKean* (*t*). "The purposes of an inquest are first to ascertain the cause of death, second, whether or not any one is criminally responsible for the death and if any one is criminally responsible, to procure evidence in order that the person responsible may be brought to justice."

If we bear in mind the true object of an inquest we shall find, that, for failing so to define that object, our county courts have, in applying the law to specific facts, reasoned themselves into a complete circle to the infinite discomfiture of coroners.

Sect. 79. The coroner must be called upon before he is obliged to act in any way (*u*). Moreover, if the coroner is not called upon he has no right to interfere (*v*). From this it might be argued that as the township is no longer amerced for not notifying the coroner he will not be notified and will therefore be powerless to investigate where investigation is most needed. To this the simple answer is that any one may notify the coroner

(*p*) Murder or manslaughter, *Bender's Case* (*supra*).

(*q*) *Winger v. McKean*, 11 Dist. 555; s. c. 26 Pa. C. C. R. 126; 8 Del. Co. 431; 18 Mont. 88 (1901).

(*r*) *Miller v. Cambria County* (*supra*).

(*s*) *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900).

(*t*) 31 Pa. C. C. R. 664 (1905).

(*u*) *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900).

(*v*) From the statute of 4 Edward I down, the words have invariably been "when notified."

to view the body and some one will always be on hand to call for the coroner whenever there is need and perhaps oftener. Besides it is indictable to bury a body over which an inquest ought to be held (*w*).

When the coroner (*x*) has been called upon to act, it is his duty to go at once to the place where the body is and investigate the circumstances surrounding the death. Every case where he is called in may not require an inquest; the coroner, therefore, should make a preliminary examination before summoning his jury (*y*). This idea is quite modern, having never been advanced until Lord Denman proclaimed it in 1842, in the case of the *Queen v. The Great Western Railroad* (*z*). But though the doctrine is a new one it is a wise one. Bearing in mind the fact that the inquest is for the purpose of ascertaining whether or not a crime has been committed, it seems only reasonable that if it plainly appears what was the cause of death and that no crime has been committed, the coroner should so return and hold no inquest. But unless the facts are so positive as to exclude the possibility that a jury of six men could find there was a crime there ought to be a judicial determination of those facts. The county courts have tended to go further and say that if the coroner finds there is no reasonable suspicion of murder or manslaughter he ought to abstain from summoning a jury

(*w*) *Burnett v. Lackawanna County*, 9 Pa. C. C. R. 95; s. c. 1 Lack. Jur. 410 (1890); citing 1 Salk. 377 and 7 Modern, 10.

(*x*) Or justice of the peace acting as coroner, *Grubb's Case*, 3 Pa. J. L. R. 78 (1904); *Arnold's Case*, 4 Pa. J. L. R. 49 (1905).

(*y*) *Grubb's Case* (*supra*); *Arnold's Case* (*supra*); *Coroner's Inquest*, 28 Pa. C. C. R. 428 (1903); *Pfouts Case*, 7 Pa. C. C. R. 267 (1889); *Lee's Case*, 9 Pa. C. C. R. 474 (1891); *McFadgen v. Chester Co.*, 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891); and this was so before the Act of 1897 gave them fees for making such an investigation. *The Queen v. Great Western R. R.*, 43 E. C. L. R. 759 (1842); *Burn's Case*, 5 Pa. C. C. R. 548 (1888); *Witmore's Case*, 3 Dist. 699; s. c. 14 Pa. C. C. R. 463 (1894); *Approval of Coroner's Inquests*, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896); *Coroner's Inquests*, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); and see *Rambo v. Chester Co.*, 1 Chest. Co. 414-416 (1878); *Hopkins v. Chester Co.*, 1 Chester Co. 481 (1878); *Jones' Case*, 1 Pa. C. C. R. 19 (1885).

(*z*) 43 E. C. L. R. 759 (1842).

(a). But it is respectfully submitted this carries the rule entirely too far. It is not the object of the inquest to determine merely the responsibility for a given crime, but whether or not a crime has been committed. Circumstances which appear but innocent may bear, on close examination, the marks of felony or criminal negligence; it is only fair to the community that they should have judicial inspection. Facts may not appear suspicious, but it is proper where the death has been sudden that there should be a judicial determination of that appearance. They may seem all right, but the coroner's jury should declare them so, before the community is completely protected. It seems, therefore, too extreme to say that where death results from natural causes no inquest should be held nor preliminary examination made. Of itself the rule is correct but who is to say authoritatively whether or not the death resulted from natural causes unless it be done by the verdict of the coroner's jury.

Previous to 1897, no fees were provided for this preliminary examination. This condition led to abuses clearly set out by Hemphill, J., in *McFadgen v. Chester County* (c). "While it is thus seen that the law requires the coroner to make a preliminary investigation (d) as to the necessity of holding an inquest, it makes no provision for compensating him for such service unless an inquest be held. This seems unjust (e), for such investigations take not only time, but often require the coroner to travel considerable distance and be at some expense. It becomes therefore an inducement for him to determine in favor of an inquest whether necessary or not as he otherwise receives no compensation for his time, trouble or outlay. This, however, we are unable to rectify; the power to do lies with the legislature alone."

(a) *The Queen v. Great Western R. R.* (*supra*); affirmed as to this Commonwealth, *Burn's Case* (*supra*), and *Cochrane's Case*, 12 Dist. 477; s. c. 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903).

(b) *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900); and see *Metzger's Inquest*, 8 Dist. 573 (1889).

(c) 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891).

(d) *Witmore's Case*, 3 Dist. 669; s. c. 14 Pa. C. C. R. 463 (1894).

(e) *Contra*, *Witmore's Case* (*supra*).

It took six years for the legislature to learn the value of these suggestions. The facts of *McFadgen v. Chester County* (*f*) did not warrant the view that the coroner was often induced to hold inquests unnecessarily because there was no fee for the preliminary examination. In that case it appeared that a farmer's man who was perfectly well one night was found dead next morning. He died in his bed in the house of a thoroughly respectable farmer. The appearance of the bed showed that there had been no struggle. The coroner called an inquest to determine these apparently simple facts. On submitting his inquest, fees were refused him on the ground that he should have been satisfied on preliminary investigation that the death was not from violence or undue means and he should have held no inquest. It must be remembered that the payment of fees is a very different question from the approval of the inquest and while the county court may have the right to legislate away coroners' rights to fees, they have no right to determine that an inquest was improperly held, for that is a matter of the coroner's discretion, as we shall see later. It is, therefore, respectfully submitted that the decision in *McFadgen v. Chester County* is wrong. The inquest ought to have been held, the man might have been killed by poison, no appearance of a struggle would have been made in his room by that subtle agent, and the respectability of the family in which the death occurred ought not to be allowed to cover up the possibility that a crime might have been committed (*g*). The case shows how erroneously the rule is applied. It is true that where the death occurs purely from natural causes, no inquest should be held, but from that rule it by no means follows that because the jury returns a verdict of death by natural causes the inquest should not have been held. Such an application of the rule shows that the court took the matter up from the wrong end. Viewed

(*f*) *Supra*.

(*g*) The court in that case may have been swayed by the fact that the coroner was strongly requested to hold the inquest, and therefore did not make a judicial decision as to the necessity of the inquest. They do not put their decision on that ground, however.

in the light of the verdict it was easy to say the inquest was unnecessary, but the coroner had no verdict to help him determine whether or not to hold an inquest. On the other hand it has been held that if the coroner in his preliminary examination requires the aid of witnesses (*h*) or of a physician (*i*) he must pay for their services out of his own pocket. Such decisions are iniquitous toward the community, for they practically force the coroner always to call the jury, which is an expense to the county, whenever a person is found suddenly dead. In marked distinction to this line of authorities is Arnold's Case (*k*) where the inquest disclosed the decedent died a natural death, whereupon it was held that was the very purpose of the inquest. A question arises under the act of 1897, as to how far the deputy coroner or justice of the peace is justified in taking a preliminary examination. It has been said that the duties imposed by the act are judicial and cannot be delegated in the absence of statutory authority (*l*). That may be so, but it seems on careful consideration that no duties are imposed by the act, but the only change made in the law by it is the provision of fees for duties which previously had to be performed *gratis* by the coroner or deputy or justice as the case might be. It may be true that the deputy coroner or justice cannot be paid for the services they perform (*m*), but that does not hinder them in the performance of those duties, or at least in theory, ought not to.

Sect. 80. In Pennsylvania there is no general definition of the duties and powers of coroners. "There is no law that defines all the subjects of inquiry for the coroner's inquest." It is true that the statutes of fourth Edward I, Sect. 2 (*n*) and third Henry VII (a portion of each of which statutes are in force with us) (*o*), command the coroner

(*h*) *Troutman v. Chambers*, 9 Dist. 533 (1900).

(*i*) *Winger v. McKean County*, 11 Dist. 555; s. c. 26 Pa. C. C. R. 126; 8 Del. Co. 431; 18 Mont. 88 (1901).

(*k*) 4 Pa. J. L. R. 49 (1905).

(*l*) *Per Rice, P. J.*, in *Groves Case*, 26 Pa. C. C. R. 449 (1900); citing *Commonwealth v. Higgins*, 5 Kulp, 271 (1889), and *Fayette County Deputy Coroner's Return*, 20 Pa. C. C. R. 641 (1898).

(*m*) See Post, Chapter XII, Sect. 102.

(*n*) The court probably means the whole act.

to go to the place where any one is slain or has suddenly died and inquire into the cause of death, but it has been observed that these statutes being wholly directory and in affirmance of the common law (*p*) the coroner is not thereby restrained from any part of his duty not mentioned in them which was incident to his office before (*q*). In this state the general understanding of his duty is that he is to inquire into the cause of all violent or extraordinary deaths (*r*). At first blush the act of 16th April, 1907, P. L. 92 seems to give us a general definition of the coroner's duties. It provides "It shall be the duty of the coroner and the deputy coroner of any county of this commonwealth where the cause of a death is of a suspicious nature and character to cause an investigation of the facts concerning said death and to make or cause to be made such an autopsy as the facts of the case demand, by such official." On first reading the act is wholly unintelligible. Does it mean that hereafter the coroner and his deputy must both sit to hold inquests? Evidently that is not the intention of the legislature, but the act provides that they shall both sit, not that either may. The last three words mean nothing whatever, and by no contortion of grammar nor statutory construction can be twisted to fit into any other part of the section. But looking at the section with a broad view and a mind freed from the smallness of legal technicality and the rules of English syntax the act is wholly in affirmance of the common law and neither con-

(*o*) The report of the judges in 1808, 3 Binney, 599-601, speaks thus of 4 Edward I, Section 2: "This statute is in force except those parts which state the coroners' duties in the following points, viz.: making inquiry as to the property of any person or seizing the property of any person, treasure that is found, appeal of rape or of wounds, or any other appeals, deodands and wreck of the sea, and also except that part which provides that lands shall remain in the king's hands until the lord of the fee have made fine of it." Thus a document which probably never passed Parliament has become one of the fundamental laws of the Commonwealth of Pennsylvania. It has been invariably held a statute of Pennsylvania, *Allegheny v. McClung*, 53 Pa. St. 482 (1866); *Coroner's Case*, 32 L. I. 142; s. c. 7 Leg. Gaz. 125; 11 Phila. 387 (1875); *Grubb's Case*, 3 Pa. J. L. R. 78 (1904); *Commonwealth v. Higgins*, 5 Kulp, 269 (1889); *ex parte Schulz*, 6 Wharton, 269 (1841).

(*p*) *Per Gibson, C. J., ex parte Schulz*, 6 Wharton, 269 (1841).

(*q*) *Ante* Sect. 27, note (*e*).

(*r*) *Lancaster v. Dern*, 2 Grant, 252 (1852); and see *McFadgen v. Chester County*, 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891).

fers nor removes powers which the coroner did not previously possess.

It may be said then, to be a little more explicit, that the coroner's inquest should be held in cases of sudden or violent death whether it takes place by visitation of God, by misfortune, by suicide or by the hand of another in murder, manslaughter, self-defense, or by accident (*s*), and all those who die in prison (*t*). In other words we may say the duty to hold the inquest arises, 1, where the coroner has cause to suspect (*u*) the deceased was feloniously destroyed (*v*); 2, where death was caused by violence (*w*); 3, where he has any ground to suspect that the death was an unnatural or a suspicious one (*x*). Indeed, wherever there is a possibility that the death was caused by felony or criminal negligence.

It is sometimes said "when there is no ground for supposing a felonious destruction of the person or where the surrounding facts and circumstances do not show unlawful violence or where there are no suspicious circumstances which would reasonably lead to suspect unlawful violence, there is no necessity for an inquest and the coroner or justice of the peace should so return in accordance with the act of March 30, 1897" (*y*); or where there is no ground to suspect the death was an unnatural one (*z*) the same course should be pursued. Let us consider the rule

(*s*) Per Reeder, J., *Uhler v. Northampton County*, 1 *Lehigh Valley Law Report*, 213 (1886); and see *Rentschler v. Schuylkill County* (*supra*); and see *ante*, Sect. 69.

(*t*) *Rentschler v. Schuylkill County* (*supra*).

(*u*) *Coroners' Inquests*, 28 Pa. C. C. R. 428 (1903); *Burn's Case*, 5 Pa. C. C. R. 548 (1881); *Marvin Shaft Inquest*, 3 Pa. C. C. R. 10 (1887).

(*v*) *Northampton County v. Innes*, 26 Pa. St. 156 (1856); *Coroners' Inquests*, 28 Pa. C. C. R. 428 (1903); *Cochrane's Inquest*, 12 Dist. 477; s. c. 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903); *Marvin Shaft Inquest* (*supra*).

(*w*) *Commonwealth v. Harmon*, 4 Pa. St. 269 (1846); *Cochrane's Inquest* (*supra*), "violent or extraordinary"; *Lancaster v. Dern* (*supra*), but some add that is unlawful violence"; *Coroners' Inquests* (*supra*), "by another person"; *Marvin Shaft Inquest* (*supra*).

(*x*) *Coroners' Inquests* (*supra*); *Marvin Shaft Inquest* (*supra*).

(*y*) *Coroners' Inquests*, 28 Pa. C. C. R. 428 (1903).

(*z*) *Fayette County v. Batton*, 108 Pa. St. 591 (1885); *Cochrane's Case* (*supra*); *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900), and see *McFadgen v. Chester Co.*, 10 Pa. C. C. R. 124, s. c. 7 Mont. 149 (1891).

so laid down and its application. The coroner is not compelled nor is it his duty to inquire of every sudden death nor every time he is called upon so to do (*a*). He is to decide whether or not he should act. "The duty of a coroner to hold an inquests rests on sound reason, on that reason which is the life of the law. It is not a power to be exercised capriciously or arbitrarily against all reason. The object of an inquest is to seek information and obtain and secure evidence in case of death by violence or other undue means. If there be reasonable ground to suspect it was so caused, it becomes the duty of the coroner to act. If he has no ground for suspecting the death was not a natural one it is a perversion of the whole spirit of the law to compel the county to pay for such services" (*b*).

This is the ruling of the supreme court stated at length. There are certain matters which must be considered before we can thoroughly appreciate the application of this rule. The coroner is himself the only judge of the necessity of an inquest (*c*), not the neighbors and relatives, even though the court disagree with him (*d*) and his finding is not sub-

(*a*) Fayette County Coroner's Return (*supra*), and see *McFadgen v. Chester County* (*supra*).

(*b*) Per *Mercur, J.*, *Lancaster Co. v. Mishler*, 100 Pa. St. 627, quoted by *Hemphill, J.*, in *McFadgen v. Chester County* (*supra*), and cited, *Coroners' Inquests*, 1 Pa. C. C. R. 14; s. c. 3 *Kulp*, 451; 2 *Del. Co.* 446; 3 *Lanc. L. R.* 70 (1885); *Marvin Shaft Inquest*, 3 Pa. C. C. R. 10 (1887); *Pfount's Case*, 7 Pa. C. C. R. 265 (1889); *Bender's Case*, 8 Pa. C. C. R. 664 (1890); *Lee's Case*, 9 Pa. C. C. R. 474 (1891); *Watson v. Beaver County*, 9 Pa. C. C. R. 495 (1891); *Approval of Coroner's Inquests*, 7 *Dist.* 566; s. c. 20 Pa. C. C. R. 660; 2 *Docket*, 65 (1896); *Jones' Case*, 1 Pa. C. C. R. 14 (1885); *Cochrane's Case*, 12 *Dist.* 477; s. c. 27 Pa. C. C. R. 282; 2 *Pa. J. L. R.* 27 (1903); *Uhler v. Northampton County*, 1 *Lehigh Valley Law Reporter*, 213 (1886).

(*c*) *Coroners' Inquests* (*supra*); *Winger v. McKean*, 11 *Dist.* 555; s. c. 26 Pa. C. C. R. 126; 8 *Del. Co.* 431; 18 *Mont.* 88 (1901); *Fayette County Coroner's Inquest*, 30 Pa. C. C. R. 321; s. c. 35 *P. L. J.* 265; 9 *Del. Co.* 431 (1904); *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900); *Metzger's Inquest*, 8 *Dist.* 573 (1899), (But when the justice holds inquest the decision is for the court, *ibid*), and see *Rambo v. Chester Co.*, 1 *Chester Co.* 414-416 (1878); *Hopkins v. Chester County*, 1 *Chester Co.* 481 (1878).

(*d*) *Fayette County Coroner's Inquest*, 30 Pa. C. C. R. 321; s. c. 35 *P. L. J.* 265; 9 *Del. Co.* 431 (1904); but when some decisions go so far as to say in such a case his fees are to be refused, and one that such a practice is to be encouraged, *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900), and see *King v. Justices of Kent*, 11 *East.* 229 (1809), we see it is pernicious.

ject to judicial criticism or review (*e*). Although the coroner is not a court of record (*f*) in holding his inquest he acts in a judicial capacity (*g*) and his discretion must not therefore be exercised capriciously (*h*). The decision is a judicial one, and must be based upon judicial reasons (*i*). It would seem that the decision should be one of law not of fact. The coroner has no authority to employ a physician or call witnesses (*k*) to assist in this decision (*l*).

Sect. 81. The coroner is to make a judicial decision as to whether or not an inquest is to be held. "Where there is cause to suspect that the deceased was feloniously destroyed, the duty of the coroner is plain (*m*), but where the death was caused by violence or other undue means there is more difficulty in determining when to hold an inquest" (*n*). All cases of sudden death do not need investigation (*o*). There are certain elements that make a coroner's inquest necessary, but the absence of which is not *ipso facto* a reason why the inquest should not be held.

1. If the death is unnatural an inquest should be had (*p*), but if it appears plainly that the death was brought on

(*e*) *Weaver v. Northampton County*, 2 Lehigh Valley, 408 (1887), and see *ante*, Sect. 68.

(*f*) *Commonwealth v. Higgins*, 5 Kulp, 269 (1889).

(*g*) *Lancaster County v. Mishler*, 100 Pa. St. 624 (1882).

(*h*) *Lancaster County v. Mishler* (*supra*); *Coroner's Inquest*, 28 Pa. C. C. R. 428 (1903); *Lee's Case* (*supra*); *Fayette County v. Batton*, 108 Pa. St. 594 (1885); *Coroners' Inquests*, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); *McFadgen v. Chester County* (*supra*); *Burns' Case* (*supra*); *Cochrane's Case* (*supra*); *Winger v. McKean* (*supra*); *Miller v. Cambria*, 29 Superior Court, 166 (1905).

(*i*) *Winger v. McKean* (*supra*); but see *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900).

(*k*) *Winger v. McKean* (*supra*).

(*l*) But see *Cochrane's Case*, 12 Dist. 477; 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903).

(*m*) *Pfout's Case*, 7 Pa. C. C. R. 265 (1889); *Metzger's Inquest*, 8 Dist. 573 (1899); *Approval of Coroners' Inquests*, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896).

(*n*) *Lee's Case*, 9 Pa. C. C. R. 474 (1891); *Coroners' Inquests*, 28 Pa. C. C. R. 428 (1903). See *Jones Case*, 1 Pa. C. C. R. 19 (1885).

(*o*) *The King v. The Justices of Kent*, 11 East, 229 (1809). *Appleman's Case*, 7 Jurist, 201 (1909).

(*p*) *McFadgen v. Chester County*, 10 Pa. C. C. R. 124; s. c. 7 Mont. Co. 149 (1891); *Coroner's Inquest*, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); *Jones Case*, 1 Pa. C. C. R. 19 (1885); *Winger v. McKean*, 31 Pa. C. C. R. 664 (1905). See *Metzger's Inquest*, 8 Dist. 573 (1899).

by natural causes there should be no inquest (*q*). The distinction here is a very fine one and one on which the courts have been very apt to go wrong. It is a distinction which it would have been better to abandon or never to have instituted in the law. Its interpretation depends largely on the second element.

2. If the death was caused by violence it is submitted there should be an inquest (*r*) even more than this, in cases where violent death is suspected the coroner should inquire (*s*). The question therefore arise what is "violence"? The supreme court has never defined it though they have illustrated its application (*t*), but it has been used without qualification in almost every case on the subject. The Century Dictionary defines "violence" (*u*) as force, vehemence, intensity, but adds a legal definition we need not here regard. Bouvier defines it (*v*) as "The abuse of force. That force which is employed against common right, against the laws

(*q*) *Winger v. McKean*, 31 Pa. C. C. R. 664 (1905); *McFadgen v. Chester County* (*supra*); *Cochrane's Inquest*, 12 Dist. 477; s. c. 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903); *Miller v. Cambria County*, 29 Superior Court, 166 (1905). It is doubtful in spite of this case whether a death due to negligence should not be investigated, *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900); and see *Metzger's Inquest* (*supra*).

(*r*) *Commonwealth v. Harmon*, 4 Pa. St. 269 (1846), affirming 6 P. L. J. 120; *Pfout's Case*, 7 Pa. C. C. R. 265 (1889); *Northampton County v. Innes*, 26 Pa. St. 156 (1856), affirming 3 P. L. J. 644; *Allegheny County v. Shaw*, 34 Pa. St. 301 (1859); and see 7 P. L. J. 217; 14 Lanc. Bar. 101; 30 P. L. J. 361; 39 L. I. 459; 12 W. N. C. 312; *Lancaster County v. Mishler*, 100 Pa. St. 624; *Coroner's Inquest*, 28 Pa. C. C. R. 428 (1903); *Fayette County v. Batton*, 108 Pa. St. 591 (1885); *Jones Case*, 1 Pa. C. C. R. 19 (1885); *Metzger's Inquest*, 8 Dist. 573 (1899); *Fayette County Coroner's Inquest*, 30 Pa. C. C. R. 321; s. c. 35 P. L. J. 265; 9 Del. Co. 431 (1904); *Coroner's Inquest*, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); but see *Rambo v. Chester Co.*, 1 Chest. Co. 414-416 (1878); *Hopkins v. Chester Co.*, 1 Chest. Co. 481 (1878); *McFadgen v. Chester Co.*, 10 Pa. C. C. R. 124; 7 Mont. 149 (1891); *Witmore's Case*, 3 Dist. 699; 14 Pa. C. C. R. 463 (1894); *Lee's Case*, 9 Pa. C. C. R. 470 (1891). It is not necessary that the death should be violent and sudden, violent is enough. *Lancaster v. Dern*, 2 Grant, 262 (1852); but sudden alone will not suffice. *McFadgen v. Chester County*, 10 Pa. C. C. R. 124; 7 Mont. 149 (1891). Some cases say violence or other undue means. *Fayette County v. Batton*, 108 Pa. St. 594 (1885); *Lee's Case*, 9 Pa. C. C. R. 474 (1891).

(*s*) *Commonwealth v. Harman*, 4 Pa. St. 269 (1846); *Northampton Co. v. Innes* (*supra*); *Allegheny Co. v. Shaw* (*supra*).

(*t*) *Lancaster v. Dern*, 2 Grant, 262 (1852).

(*u*) Vol. 8, p. 6761.

(*v*) Vol. 2, p. 1197.

and against public liberty. Violence is synonymous with physical force and the two are used interchangeably in relation to assaults, by elementary writers on criminal law." It is submitted this definition is too narrow. Words and Phrases says (*w*) "violence according to law dictionaries is synonymous with physical force." According to the American and English Encyclopedia of Law, it is a general term and includes all sorts of force. This definition most nearly corresponds with the connotation of the word to the ordinary mind. Laymen, by violence, do not understand something criminal. Even lawyers say a man was thrown with violence to the pavement, connoting mere negligence. Moreover the special acts show us the real meaning of the word in the eye of the law of this commonwealth. The Luzerne County Act (*x*) specifically limits the word "violence" by the word "unlawful" with the intent of limiting the coroners' powers in just the way that Bouvier's definition of "violence" would. If "violence" referred only to unlawful acts, it would be unnecessary to say "unlawful violence." The Westmoreland County act (*y*) uses the identical words. In Philadelphia County we have two acts *in pari passu* giving the coroner a broader scope than those allowed by the other acts above referred to. In these acts the word "violence" is used without qualification in a way that would be senseless if the word refers to criminal violence only (*z*). It has been said the supreme court have given us no definition of violence; they have, however, illustrated the meaning of the word. In *Lancaster v. Dern* (*a*) a woman was run into by a sleigh, one of the shafts of which penetrated her brain causing her death three days afterwards. These circumstances the supreme court said constituted violence within the meaning of the common law.

The county courts have continually overlooked the illus-

(*w*) Vol. 8, p. 7327.

(*x*) 30 March, 1866, Sect. 1, P. L. 391; *quaere*, whether all these acts are not superseded by the Act of 16 April, 1907, P. L. 92?

(*y*) 18 March, 1869, Sect. 1, P. L. 404.

(*z*) See Acts of 16 April, 1845, Sect. 9, P. L. 539, and 24 March, 1867, Sects. 1, 2 and 3, P. L. 532.

(*a*) 2 Grant, 262 (1852).

tration given in *Lancaster v. Dern* and have consistently attempted to limit the meaning of the word "violence." In *Jones Case (b)* the court took the whole phrase "violence and undue means" (*c*), coupled them together and declared they refer to some unlawful act. In point of time the next case was *Burn's Case (d)*, which went beyond any previous decision, saying of violence, "it has reference to human agency and includes the idea of responsibility for crime." This was immediately followed in *Pfout's Case (e)*, where the question of violence was discussed and not one word said about a limitation upon the meaning of the word. *Lee's Case (f)* is decided in exactly the same words as *Burn's Case*. In *Witmore's Case (g)*, the rule at first laid down in *Jones Case* was adopted and this has been followed (*h*) by the superior court (*i*). By far the best reasoned and soundest opinion is that in *Uhler v. Northampton County (k)*. Reeder, J., delivered the opinion of the court, which is worthy of quotation at length.

"The attorney for the defendant, however, contends that the word 'violence' as used by the supreme court in that case is not to be understood in its broad and literal sense, but that it has in that connection a restricted meaning, viz., violence at the hands of another. This view would be giving both clauses of the sentence the same interpretation, for when the death has been caused by violence at the hands of another the coroner 'would have just reason to suspect that the deceased had been feloniously destroyed.' So that when the supreme court say, 'or when death has been caused by violence,' they mean something different from that which has just been previously said by them. Therefore the interpretation contended for by the attorney for the defend-

(b) 1 Pa. C. C. R. 19 (1885).

(c) Taken from *Lancaster County v. Mishler*.

(d) 5 Pa. C. C. R. 548 (1888); cited with approval in *Coroner's Inquest*, 28 Pa. C. C. R. 428 (1903).

(e) 7 Pa. C. C. R. 265 (1889).

(f) 9 Pa. C. C. R. 474 (1891).

(g) 3 Dist. 699, s. c. 14 Pa. C. C. R. 463 (1894).

(h) *Metzger's Inquest*, 8 Dist. 573 (1899).

(i) *Miller v. Cambria County*, 29 Superior Court, 166 (1905).

(k) 1 *Lehigh Valley*, 213 (1886).

ant cannot be correct. Besides his interpretation of the meaning of the language used would be in contravention of the Statute of 4th Henry VII, the other in accord with it. The supreme court cite with approbation in support of the declaration that it is the duty of the coroner to hold an inquest, the case of the Commonwealth *v.* Harman, 4 Barr. 269, where Gibson, C. J., says 'There ought to be inquests held in all cases of death by violence' an opinion founded upon reason and public policy.

"The obvious cause of death may be the falling of a derrick or a tree suspended across a railroad track, but until an investigation is made and the fact regularly and judicially determined how do we know but what the derrick was made to fall or the tree suspended for the mere purpose of taking of life, or that there was such gross negligence on the part of some one as to constitute a crime. The only protection the public has in such cases is a coroner's inquest for the purpose of determining first, whether any one was guilty, and second who? Suppose a man walking along a public street in a city should be struck by a falling brick or timber from a building in process of erection, would the coroner be excluded from holding an investigation, because the manner of death was obvious or would it be his duty to investigate whether the missile was directed by a hand intent upon taking life or whether death resulted from criminal negligence? The question answers itself. I can see no distinction between that case and the two inquests referred to in the case stated, where in one instance death resulted from the falling of a part of a derrick and in the other from a tree suspended across a railroad track, I have not discussed the case when the inquest was held on the body of a suicide for the reason that the statute of 4 H. 7 so clearly makes it the specific duty of the coroner to hold inquests in all such cases as to make discussion superfluous."

The reasoning of this case is so conclusive that it is respectfully submitted that, in spite of the overwhelming weight of authority to the contrary, the case is right and it is confidently asserted that if the case should be brought before the supreme court, that tribunal would follow the doctrine laid down in *Commonwealth v. Harman*, followed in

Lancaster *v.* Dern, and interpreted and expounded in Uhler *v.* Northampton County and not the ill considered decisions which seem to have been dictated by too reverend a care for the county pocket book, even though they have the sanction of a decision of the superior court.

Sect. 82. We have already noticed that in Luzerne and Westmoreland counties (*l*) there are special acts regulating the duties of coroners these acts are practically identical. The Luzerne County Act (*m*) reads as follows:

"That it shall not be the duty of the coroner or justice of the peace of the county of Luzerne to hold an inquest on the body of any deceased person, unless the said deceased person shall have died of unlawful violence or other unlawful acts at the hands of some other person or persons, or there be such strong suspicion of such violence or other unlawful acts as to make an inquest necessary, which violence and suspicion of the same shall be certified to by the coroner or justice holding such inquest and also by the jurors under their oaths and be made a part of the return of such inquest, and if the said coroner or justice shall hold an inquest in any other case he and the jurors shall not be entitled to any compensation therefor."

This act has been held to be in affirmance of the common law (*n*) but it is respectfully submitted that the most casual glance at the common law shows that such is not the case. The rule laid down by this statute is not and never was the common law. Under this statute we find that in Howarth's Case (*o*) a justice's inquests were not approved because it did not appear that there had been unlawful violence by another nor strong suspicion thereof. In Smith's Case (*p*) the court went further; under this act they say the

(*l*) The Act of 18 March, 1869, Sect. 1, P. L. 404, relating to Westmoreland County, was extended by the Act of 9 March, 1872, Sect. 1, P. L. 294, to Cambria, and by the Act of 24 March, 1871, Sect. 1, P. L. 450, to Carbon.

(*m*) Act of 30 March, 1866, Sect. 1, P. L. 391, when Lackawanna County was erected in 1878, it was subject to this act, having been part of Luzerne. See the Act of 16 April, 1907, P. L. 92.

(*n*) *Burnett v. Lackawanna County*, 9 Pa. C. C. R. 95, s. c. 1 Lack. Jur. 410 (1890).

(*o*) 2 Luzerne, L. R. 119 (1873).

(*p*) 4 Lanc. L. R. 302 (1887).

occasion for holding the inquest should appear in the return and the simple statement "there was strong suspicion of violence such as to make an inquest necessary" is not enough. These are the words of the act and the decision must be interpreted to mean that the certification required by the act must be one of the facts not of conclusions. But even though the act of 1866, is applicable to this case it is difficult to see how the court can reconcile such a decision to the general rule of law that the coroner acts in a judicial capacity and it is in his discretion to determine the necessity for the holding of an inquest. Of course under this act Stoecker's Inquest (*q*) follows as a matter of course; where a man was killed while trying to make a coupling on a railroad the official interposition of the coroner was unnecessary.

In Philadelphia County quite a different state of affairs exists. The act of 1845 (*r*) provides that it shall not be the duty of the coroner to hold an inquest over a deceased person unless they died a violent death, leaving the word "violent" unexplained (*s*). It would seem difficult to understand the exact meaning of this act in view of that failure to explain, but it has been superseded in this respect by the act of 1867 (*t*). That act provides "that it shall be the duty of the coroner of the city and county of Philadelphia to hold an inquest on the body of any deceased person who shall have died of violent death or whose death shall be sudden, provided that such sudden death be after an illness of less than twenty-four hours and that no regular practicing physician shall have been in attendance within said time, or that suspicious circumstances shall render the same necessary, which said suspicions shall be first sworn to by one or more citizens of said city." It would be difficult to frame an act which would more completely define the real duty of the coroner in the present system of government. The

(*q*) 5 Kulp, 487 (1890).

(*r*) 16 April, 1845, Sect. 9, P. L. 539.

(*s*) This act was extended to Armstrong County by the Act of 8 March, 1855, P. L. 64, but that act was repealed by the Act of 12 March, 1867, Sect. 1, P. L. 404.

(*t*) Act of 22 March, 1867, Sect. 1, P. L. 532. The Act of 1 May, 1905, P. L. 330, is supposed to supersede that act, but the latter is beyond doubt unconstitutional.

whole object is covered. Only one possible criticism can be made of this act. It defines "sudden death" to mean death resulting after an illness of less than twenty-four hours. It seems unfortunate that a hard and fast rule should be laid down as to the meaning of the word "sudden." But if a hard and fast line must be drawn twenty-four hours is the very best place to draw it. It would therefore seem that this act with this single exception is in affirmance of the common law. If this be so we are necessarily brought to the conclusion that the Luzerne County act is in detriment of the common law, for the two are unalterably opposed to each other. The Philadelphia act admitting not only death by criminal negligence, but by any negligence lest the negligence be criminal. The act of May 1, 1905, Sect. 8, P. L. 330, even if constitutional, does not alter these duties, but in substance re-enacts the statute of 1867 (*u*).

Sect. 83. The courts have dealt profusely with this point. Where the death is enveloped in mystery they tell us it is proper to hold an inquest (*v*). Metzger's Inquest (*w*) affirms this proposition, *e converso* saying.

"So long as there are no suspicious circumstances hanging around the finding of the dead body or the death of the individual the coroner need not act, neither should he act nor any one else act for him." The statement here paraphrases that in Coroners' Inquests in 1885 (*x*) where the court held "the coroner should hold an inquest where the death was caused by violence or where there is any ground to suspect the death of any person was an unnatural one or an unaccountable one, or a suspicious one and *e converso*." "Where there is cause to suspect that the deceased was feloniously destroyed (*y*) the duty of the coroner is plain,"

(*u*) It is doubtful whether the Act of April 16, 1907, P. L. 92, repeals these acts, that statute does not in terms repeal local acts.

(*v*) Pfout's Case, 7 Pa. C. C. R. 265 (1889).

(*w*) 8 Dist. 573 (1899), citing Coroners' Inquests, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885).

(*x*) 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); and see Jones' Case, 1 Pa. C. C. R. 19 (1885); McFadgen v. Chester County, 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891); Metzger's Inquest, 8 Dist. 573 (1899).

(*y*) Fayette County v. Batton, 108 Pa. St. 591 (1885); Pfout's Case (*supra*); Jones' Case (*supra*); Lee's Case, 9 Pa. C. C. R. 474

or as was said in *Northampton County v. Innes* (2) "it is obviously proper for the coroner to hold an inquest *super visum corporis* wherever there is cause to suspect the deceased was feloniously destroyed" (a). It is well enough to say as we have already observed "where the death has been sudden and the cause unknown and the circumstances create the suspicion of guilt" (b) that it is important to hold an inquest. It is equally true that "the fact that one dies in his home surrounded by his family does not prevent the coroner from holding an inquest *super visum corporis*, if he suspects foul play" (c). But some cases limit the occasion of inquest to cases where felony is suspected (d). There can however be cavil at this statement, for it narrows the object of the inquest, which it must be remembered is as important to establish innocence as to investigate guilt and should be invoked against a common nuisance or criminal negligence, even though it does not amount to felony.

Sect. 84. If the cause of death is known beyond

(1891). Approval of Coroners' Inquests, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896); Metzger's Inquest (*supra*); Coroners' Inquests, 28 Pa. C. C. R. 428 (1903); but not in every case, *Winger v. McKean*, 31 Pa. C. C. R. 664 (1905); *e converso* where there is no reason to suspect there should be no inquest, *Watson v. Beaver County*, 8 Pa. C. C. R. 495 (1891), citing *Lancaster County v. Mishler*, 100 Pa. St. 624 (1883).

(2) 26 Pa. St. 156 (1856), 3 P. L. J. 644.

(a) *Northampton County v. Innes* (*supra*); *Lancaster County v. Mishler* (*supra*); *Pickett v. Erie County*, 19 W. N. C. 60; s. c. 3 Pa. C. C. R. 23 (1887); Coroners' Inquests, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); *Jones' Case* (*supra*); *Burns' Case*, 5 Pa. C. C. R. 549 (1888); *Pfout's Case*, 7 Pa. C. C. R. 265 (1889); Approval of Coroners' Inquests, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896).

(b) *Burns' Case* (*supra*); Coroners' Inquests, 28 Pa. C. C. R. 428 (1903); *Lee's Case* (*supra*); Metzger's Inquest (*supra*); *Cochrane's Inquest*, 12 Dist. 477; s. c. 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903).

(c) *Northampton County v. Innes*, 26 Pa. St. 156 (1856), 3 P. L. 644.

(d) *Pfout's Case* (*supra*); Approval of Coroners' Inquests, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896); *Cochrane's Inquest* (*supra*); citing *Winger v. McKean* (*supra*); *Fayette County Coroners' Return*, 24 Pa. C. C. R. 498 (1900); *Fayette County Coroner's Return*, 30 Pa. C. C. R. 321; s. c. 35 P. L. J. 265; 9 Del. Co. 431 (1904); *Bender's Case*, 8 Pa. C. C. R. 664 (1890); *McFaden v. Chester County*, 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891); *Witmore's Case*, 3 Dist. 699; s. c. 14 Pa. C. C. R. 463 (1894), says murder or manslaughter, and so does *re Missiner*, 20 Mont. 200; s. c. 3 Pa. J. L. R. 88; 18 York, 115 (1904), citing *Burns' Case* (*supra*), and see *Lancaster County v. Mishler*, 100 Pa. St. 627 (1882).

question, it seems probable that there should be no autopsy (*e*). But it is doubtful in spite of the authorities whether or not an inquest should be held where the facts are all known. The last words given us by the supreme court are to the effect that it should be (*f*). Yet that was a case of unnatural death. Where it is evident that the death was caused by disease or other natural causes it seems reasonable that the inquest should be omitted (*g*). But many cases say that where the cause of death is not in doubt there should be no inquest (*h*). Thus in a case where a man of seventy eight died while under the care of his physician, in his own home and surrounded by his family, the jury having found a verdict that he died of a paralytic stroke, the coroner was denied his fee (*k*). In the Marvin Shaft Case (*l*), several miners were suffocated by having the roof of the slope on which they were working fall in on the air shaft thus shutting off the air.

The jury found that had the operator made a second opening to the face where the men were they would not have died. The court held that this was an improper subject for an inquest but that since the facts were unknown to the coroner it was within his discretion to hold the inquisition. It must be remembered in this connection that the whole subject of the coroners relations to mining ac-

(*e*) Fayette County Coroner's Return, 30 Pa. C. C. R. 321; s. c. 35 P. L. J. 265; 9 Del. Co. 431 (1904), where a fee for an autopsy was refused because the cause of death was known.

(*f*) Fayette County *v.* Batton, 108 Pa. St. 591 (1885); *contra*, Q. S. Fayette County, No. 117, December Session, 1883, MS.

(*g*) Watson *v.* Beaver County, 9 Pa. C. C. R. 495; 27 W. N. C. 469 (1891); Cochrane's Case, 12 Dist. 477; s. c. 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903); and see 11 Phila. 387; s. c. 7 Leg. Gaz. 125; 22 P. L. J. 151; 32 Leg. Int. 142 (1875).

(*h*) Marvin Shaft Inquest, 3 Pa. C. C. R. 10 (1887); Witmore's Case, 3 Dist. 699; s. c. 14 Pa. C. C. R. 463 (1894); Pfout's Case, 7 Pa. C. C. R. 265 (1889); Approval of Coroners' Inquests, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896); Cochrane's Case (*supra*); Coroners' Inquests, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); Jones' Case, 1 Pa. C. C. R. 19 (1885); Metzger's Inquest, 8 Dist. 373 (1899); and see Arnold's Case, 4 Pa. J. L. P. 49 (1905); Hopkins *v.* Chester Co., 1 Chester, 481 (1878); Rambo *v.* Chester Co., 1 Chester, 414-416 (1878).

(*k*) Lancaster County *v.* Mishler, 100 Pa. St. 624 (1882).

(*l*) 3 Pa. C. C. R. 10 (1887).

cidents has been legislated upon (*m*), and the statute law may have affected the decision.

In Burn's case this matter is thus summed up (*n*). "But where the cause of death is known as suicide and no living man is liable for the crime or results from accident so that no crime has been perpetrated in such cases there is no necessity for official investigation (*o*). And where the cause of death is unknown, but there are no marks of external violence of other circumstances creating reasonable grounds to suspect felony official investigation accomplishes nothing."

This carries the rule altogether too far. In the first place if we are to hold no inquest, where no living man is responsible for the crime none should be held where a man commits murder and suicide. Negligence under these words should never be investigated nor should poisoning unless the poisoner was a bungler. The court in this case would open the door for innumerable secret felonies. This cannot be the law.

Let us consider this question. The opinion above quoted might be thus epitomized. If "the inquest would only declare known facts, there should be no inquest" (*p*). Furst P.J. of Centre County has carried the doctrine there expressed to its logical conclusion. He says (*q*). "If the facts are known the inquest would simply declare what is previously known" and he triumphantly adds if officers would observe the rules he has laid down there would be fewer inquests. Surely man is growing confident of man's uprightness. What are known facts? Rumor is more rapid than the express train. Known facts from a legal standpoint can only be facts judicially declared. But suppose we conceive the idea of a man killed by a railroad train before a

(*m*) See Chapter on Mines.

(*n*) 5 Pa. C. C. R. 548 (1888); and see Coroners' Inquests, 28 Pa. C. C. R. 428 (1903); Lee's Case, 9 Pa. C. C. R. 474 (1891); Pfout's Case, 7 Pa. C. C. R. 265 (1889); Witmore's Case (*supra*); Metzger's Case (*supra*).

(*o*) The court entirely overlooks the Act of 3 Henry VII, which specifically provides suicide shall be investigated.

(*p*) See Witmore's Case, 3 Dist. 699; s. c. 14 Pa. C. C. R. 463 (1894).

(*q*) In Pfout's Case, 7 Pa. C. C. R. 265 (1889).

multitude of people. The facts are known. Surely this is merest accident. But man must be confident of man's integrity, if it is not to be judicially determined that it was merest accident. It might have been caused by malice pre-pense. The rule sought to be laid down here carried to its logical conclusion is this. If the facts are known there need be no inquest: only where the death is surrounded by mystery should the inquest be held. The next step is a complete *reductio ad absurdum*. If the cause of death is known, *i. e.*, if there are any witnesses who can prove what the real cause of death was (for *id certum est*) there should be no inquest. But of the cause of death is unknown, *i. e.*, if there are no witnesses, an inquest could by no possibility establish anything. If there are no marks of violence on the body no inquest should be held. Of course the case of a poisoning occurs to the mind proving this statement completely fallacious. Perhaps the word "known" is at the bottom of the whole trouble. What is the real meaning of the courts when they say if the facts are "known"? The best answer has already been given, in law no facts are "known" until they are judicially determined.

The real secret of the trouble is unwittingly summed up in Metzgers Inquest (*r*) thus: "The practice has become quite too common in this county of holding inquests every time a death occurs not entirely usual in its circumstances. When the cause of death is not doubtful the coroner *ought not to put the county to the expense of an inquest.*"

Sect. 85. Were we for a moment to lay aside more conservative thoughts and adopt the rule asserted as we have seen in the last section with so much confidence it necessarily follows that suicide should never be investigated and such has been said to be the law (*s*). It is respectfully submitted that it is to stretch the rule too far to even say

(*r*) 8 Dist. 573 (1899).

(*s*) Witmore's Case, 3 Dist. 699; *s. c.* 14 Pa. C. C. R. 463 (1894); Metzger's Inquest, 8 Dist. 573 (1899); Cochrane's Case, 12 Dist. 477; *s. c.* 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903); citing Winger's *v.* McKean, 11 Dist. 555 (1901); Burns' Case, 5 Pa. C. C. R. 543 (1888); Coroners' Inquests, 28 Pa. C. C. R. 428 (1903); Lee's Case, 9 Pa. C. C. R. 474 (1891); Pfout's Case, 7 Pa. C. C. R. 265 (1889). We needs must ask is the Act of 3 Henry VII still in force?

"where it is quite evident that the death has been caused by disease, or other natural cause, suicide, pure accident or negligence of the deceased no inquest is needed and if held no fees should be allowed therefor" (*t*). We cannot go so far as to say, "The case of suicide does not require investigation", even though we qualify the statement by saying "if the facts are known which clearly shown the case to be suicide it is improper to summon an inquest" (*u*).

While it has been said that suicide alone is insufficient ground for holding an inquest (*v*) and that where the facts surrounding a suicide are not suspicious no inquest should be held (*w*). It seems less incorrect to say that suicide may or may not be a proper subject for investigation (*x*); and it is carrying the rule too far to say that if a man is subject to melancholy his apparent suicide should not be investigated (*y*). It opens the door for secret crimes to go uninvestigated. It is not to the purpose to say the grand jury may inquire. So it may, but if the coroners inquest is to be good for anything, the coroner should be very suspicious of fair appearances.

But after all this discussion from decided cases we come to the specific enactment of parliament held by the supreme court to be still valid in Pennsylvania, the act third Henry VII, which expressly provides that all cases of suicide shall be investigated. We may look at the act and then at the cases and draw what conclusions we please. We may

(*t*) *Watson v. Beaver Co.*, 9 Pa. C. C. R. 495; s. c. 27 W. N. C. 469 (1891); and see 11 Phila. 387; 7 Leg. Gaz. 125; 22 P. L. J. 151; 32 Leg. Int. 142. Approval of Coroners' Inquests, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896).

(*u*) *Metzger's Case* (*supra*); *Witmore's Case* (*supra*); *Marvin Shaft Inquest*, 3 Pa. C. C. R. 12 (1887); *Lee's Case* (*supra*); *Watson v. Beaver County* (*supra*); *Pfout's Case*, 7 Pa. C. C. R. 265 (1889); *Grubb's Case*, 3 Pa. J. L. R. 79 (1904).

(*v*) *Cochrane's Case*, 12 Dist. 477; s. c. 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903); and see *Witmore's Case*, 3 Dist. 699; s. c. 14 Pa. C. C. R. 463 (1894); and cases there cited. But *Uhler v. Northampton County*, 1 Lehigh Valley, 213 (1886), holds suicide alone is a sufficient ground for an inquest, and the Act of 3 Henry VII specifically provides it shall be investigated.

(*w*) *Cochrane's Case* (*supra*); *Pfout's Case* (*supra*).

(*x*) *Pfout's Case* (*supra*). Approval of Coroners' Inquests, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896).

(*y*) As was said in *Grubb's Case* (*supra*), and *Pfout's Case* (*supra*).

ask any or all of the following questions. Have our county courts in the face of the supreme court the right to overrule and make obsolete statutes as old as the commonwealth itself? Shall we be guided by supreme court cases in 1841 or county court cases in 1911? Has the act of third Henry VII in force in Pennsylvania from 1688 to 1880, suddenly become obsolete of its own great age? And what shall we think of the county court which deliberately overlooks the statutes of the Commonwealth? or shall we say out of charity they did not know there was such an act? What weight shall we give to the other utterances of courts so heedless?

Leaving these thoughts as unprofitable to our inquiry we lay it down with exceeding confidence in the face of the overwhelming weight of county court authority to the contrary that suicide should always be investigated except in such places where special acts prohibit it and we rely for authority solely on the statute law of the Commonwealth, on the act of third Henry VII which was in force in Pennsylvania in 1808 and has never been repealed (*z*).

Sect. 86. From the rule that if the facts are known no inquest should be held the county courts have drawn another conclusion which must be noticed. They say an accidental death is not one to be inquired of by inquest (*a*). It may be true that where one is killed in the presence of witnesses by stepping in front of a moving train or while trying to board one no inquest should be held (*b*.) Every death on the railroad tracks certainly does not call for an inquest. But the rule has been laid down more broadly; that an accidental death should not be investigated. It has been said that no inquest should have been held where one died in convulsions due to congestions of the lungs (*c*)

(*z*) See *Uhler v. Northampton County*, 1 *Lehigh Valley*, 213 (1886), and the report of the judges, 3 *Binney*, 604 (1808). The Act of 16 April, 1907, P. L. 92, being in affirmance of the common law, does not repeal this part of the Act of 3 Henry VII.

(*a*) *Marvin Shaft Inquest*, 3 Pa. C. C. R. 10 (1887); *Walker v. McKean*, 31 Pa. C. C. R. 664 (1905); citing *Coroners' Inquests*, 1 Pa. C. C. R. 14; s. c. 3 *Kulp*, 451; 2 *Del. Co.* 446; 3 *Lanc. L. R.* 70 (1885); *contra*, *Uhler v. Northampton County*, 1 *Lehigh Valley*, 213 (1886).

(*b*) *Arnold's Case*, 4 Pa. J. L. R. 49 (1905); *contra*, *Lee's Case*, 9 Pa. C. C. R. 474 (1891).

(*c*) *Smith's Case*, 4 *Lanc. L. R.* 302 (1887).

where one was accidentally killed by an engine or a car or was found in his bed with no marks of violence, where one might be said to have died by visitation of God, was accidentally run over by cars, or by a coal train while sitting or lying on the track (*d*) found dead in his bed of heart disease (*e*) found lying on the railroad track with a broken spine and nothing to show how it happened (*f*) or where the death was caused by a stroke of lightning (*g*), a fit of apoplexy, a fit of epilepsy, or where it was caused by falling down stairs in a drunken fit (*h*) or by a fall of coal (*i*) or where one was caught in machinery (*k*) or killed by the kick of a horse (*l*) or falling from a tree (*m*) or by being burned to death because unable to escape from a burning building or where one met death by falling between two cars while trying to make a coupling and being run over (*n*) or drowning even though the jury could not say whether it was accidental or suicidal (*o*) or from inhaling or swallowing furnace gas while sleeping (*p*), washed away by a well known flood, committed suicide (had had melancholy), bathing and accidentally drowned, drank himself to death or where one was helping to load a boiler and it slipped and crushed him (*q*) or suicide (unqualifiedly) (*r*). But all these are common pleas or quarter sessions cases. In Lancaster

(*d*) Lee's Case (*supra*).

(*e*) Lee's Case (*supra*); *McFadgen v. Chester County*, 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891).

(*f*) Lee's Case (*supra*).

(*g*) Lee's Case (*supra*); *Coroners' Inquests*, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885).

(*h*) Lee's Case (*supra*); *Coroners' Inquests* (*supra*).

(*i*) Jones' Case, 1 Pa. C. C. R. 19 (1885).

(*k*) Crosby's Case, 19 P. L. J. 192; 3 Pitts. 425 (1872); citing 7 E. & B. 805; Burns' Case, 5 Pa. C. C. R. 548 (1888); *Coroners' Inquests*, 28 Pa. C. C. R. 428 (1903).

(*l*) Burns' Case (*supra*); *Coroners' Inquests* (*supra*); Lee's Case (*supra*).

(*m*) *Coroners' Inquests* (*supra*); Lee's Case (*supra*).

(*n*) Stoecker's Case, 3 Kulp, 487 (1890).

(*o*) *McFadgen v. Chester County*, 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891).

(*p*) Burns' Case (*supra*).

(*q*) Pfout's Case, 7 Pa. C. C. R. 265 (1889).

(*r*) Witmore's Case, 3 Dist. 699; s. c. 14 Pa. C. C. R. 463 (1894).

County *v. Dern* (*s*) the one supreme court case a marked difference appears. A woman was run into by a sleigh, one of the shafts of which penetrated into her brain causing death three days later, this was decided to be a proper case for an inquest. The more recent case of *Uhler v. Northampton County* (*t*) seems alone in following the ruling of the supreme court, holding that where a man was killed by a falling derrick or where a falling tree struck the engineer of a train an inquest should be held.

In this connection it is to be noticed that the act of third Henry VII expressly provides that cases of death *ex visitatione die* shall be investigated.

Sec. 87. It was held in a recent case that where the fact is plain that the death was caused by the negligence of the deceased the coroner has no jurisdiction (*u*). It may be so. On the other hand if there is reasonable ground for suspicion of criminal negligence, it is proper to hold an inquest (*v*). In *Lee's Case* it was said that wherever a man was found on the railroad track with marks of having been run over upon him, it was proper to hold an inquest, but in that case fees were refused the coroner upon that very state of facts. In *Arnold's Case* (*w*) we meet with the delightful inconsistency that where it is a question merely of who was negligent the parties should not tax the county with an inquest, but should investigate at their own expense, but in the same opinion it is said that where the negligence is such that some public good would be acquired by the inquest it should be held, implying that there could be a case of negligence causing death of no interest to the common weal.

This ruling makes the court the judge of the necessity of holding inquests. It is a well known rule that the coroner is the only judge of that necessity (*x*). Some cases add that

(*s*) 2 Grant, 262 (1852); and so an explosion was held ground for an inquest, *Allegheny v. McClung*, 53 Pa. St. 482 (1866).

(*t*) 1 Lehigh Valley Law Reporter, 213 (1886).

(*u*) *Walker v. McKean County*, 31 Pa. C. C. R. 664 (1905).

(*v*) *Lee's Case*, 9 Pa. C. C. R. 474 (1891); *Walker v. McKean County* (*supra*).

(*w*) 4 Pa. J. L. R. 49 (1905).

(*x*) *Weaver v. Northampton Co.*, 2 Lehigh Valley, 408 (1887).

the relatives and friends of the deceased are not the judges (y) but even as to that there is a conflict of opinion. It was said in Lee's Case (z) "should any person, company or corporation desire that an inquest should be held where the law does not require the coroner to hold one, it should be done," but the person desiring the inquest should pay the costs. The same rule is intimated in Arnold's Case (a) where it is said the parties interested should inquire at their own expense, but does not indicate whether or not the public coroner to hold one. Although this is the most recent Coroners Inquests (b) does not go quite so far, but is perhaps more reasonable. "I do not think that justices of the peace have the same right to exercise the coroner's judicial functions as the coroner himself has," and so if the relatives and neighbors demand and will pay for an inquest he must hold one. As recently as Cochrane's Case (c) it has been determined that where an employer desires to have it definitely determined that no negligence of his contributed to the death he can upon paying the costs of inquest require the coroner to hold one. Although this is the most recent effusion on the subject we cannot think it right. It has been repeatedly held that a request of any individual is insufficient ground for holding an inquest (d) and we cannot but agree with Wickham, P. J., in *Watson v. Beaver County* (e): "I cannot assent to the proposition that one who wants an inquest can have it by paying for it," for "it is no part of the coroner's duty to hold inquests for the vindication of individ-

(y) *Walker v. McKean Co.* (*supra*); *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900); *Coroners' Inquests*, 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885); *Winger v. McKean Co.*, 11 Dist. 555; s. c. 26 Pa. C. C. R. 126; 8 Del. Co. 431; 18 Mont. 88 (1901); *Marvin Shaft Inquest*, 3 Pa. C. C. R. 10 (1887); *McFadgen v. Chester Co.*, 10 Pa. C. C. R. 127; s. c. 7 Mont. 149 (1891).

(z) 9 Pa. C. C. R. 474 (1891); and see *Pfout's Case*, 7 Pa. C. C. R. 265 (1889).

(a) 4 Pa. J. L. R. 49 (1905).

(b) 1 Pa. C. C. R. 14; s. c. 3 Kulp, 451; 2 Del. Co. 446; 3 Lanc. L. R. 70 (1885).

(c) 12 Dist. 477 s. c. 27 Pa. C. C. R. 282; 2 Pa. J. L. R. 27 (1903).

(d) *Approval of Coroners' Inquests*, 7 Dist. 566; s. c. 20 Pa. C. C. R. 660; 2 Docket, 65 (1896); *Metzger's Inquest*, 8 Dist. 573 (1899); *Fayette County Coroner's Return*, 24 Pa. C. C. R. 498 (1900).

(e) 9 Pa. C. C. R. 495; s. c. 27 W. N. C. 469 (1891).

uals" (f). In agreeing with this proposition we are not at variance with the theory that the inquest is as much to establish innocence as guilt. Wherever guilt may possibly have crept in there should be an inquest, as we have already observed death by negligence ordinarily calls for investigation, lest it be criminal negligence. The only place where this proposition applies is in cases where as limited by the law as we have already seen it, no inquest should be held. To get the full intent of the *dicta* above cited it might be well to quote more at large from Judge Wickham's opinion. In part he says:—

"A coroner when holding an inquest is in the fullest sense a judicial officer. He and his jury constitute a court to which in the eye of the law is attached considerable dignity and which is not in the market for hire. It would be scarcely more reprehensible for a court of quarter sessions to employ itself in holding moot courts to instruct the law students and others who might be willing to pay the expenses of the proceedings than it would be for a coroner to summon jurors to hold inquests not required in the interests of public justice, but solely induced by the promise of compensation from private sources. A coroner engaging in such extra judicial work and accepting reward therefor from private persons would be guilty of a high misdemeanor. Inquests should not be held save for public purposes and at public expense."

(f) Per Hemphill, J., 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891).

CHAPTER VII.

THE CORONER'S INQUEST—HOW HELD.

Sect. 88. The last chapter was devoted to a consideration of the coroners inquest from the standpoint of necessity. We have now determined when the inquest should be held. The next inquiry to which our attention is necessarily directed is as to how the inquest is held. There is practically no authority on this point in Pennsylvania. The inquest is held just as it always has been held. But how? Let us first consider the time and place of holding the inquest. In the first place the coroner is not bound to act unless notified and this he may be by one or more of several classes of persons:

1. His own officers (*a*).
2. The police or peace officers.
3. Register of marriages, births and deaths.
4. Friends and relations of the deceased.
5. A medical practitioner who attended during life or was summoned after death.
6. Strangers or neighbors living in the neighborhood.

When the coroner is notified that one has been slain or is suddenly dead he should go forthwith to the place where the body is and make his preliminary investigation. When he has determined that an inquest is necessary he should summon his jury setting a day for the inquest as soon as may be after the death (*b*) and the view should be held if possible while the body is in the same position and other

(*a*) This classification is found in Wellington on Coroners, Vol. 2, page 6, but we cannot agree that the coroner may act when summoned only by his own officers. *Qui faciat per aliam faciat per se* and the coroner has no right to act of his own initiative.

(*b*) But not on Sunday.

(*c*) Per Hemphill, J., 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891). (208)

(*d*) Under fourth Edward I; Pickett *v.* Erie County, 19 W. N. C. 605; s. c. 3 Pa. C. C. R. 23 (1887). See Lancaster *v.* Dern, 2 Grant, 252 (1852); McFadgen *v.* Chester County, 10 Pa. C. C. R. 124; s. c. 7 Mont. 149 (1891); Rentschler *v.* Schuylkill County, 1 Schuylkill Legal Record, 289 (1880).

circumstances as when the person died (*c*). The inquest should if possible be held at the place where the body is found (*d*), but this does not mean at the very particular spot where the body is but in general at the place (*e*). The coroner's inquest must be *super visum corporis* (*f*), and if the body be not found there can be no inquest.

The question then arises what is a body. Suppose only a part of the body can be found. It seems reasonable if enough of the body can be brought before the inquest to identify it as a part of a human body there is enough to give the coroner jurisdiction to hold his inquest "*super visum corporis*."

It is not necessary that the whole evidence be presented while the body lies before the jury. It is undoubtedly a misdemeanor to bury a body upon which an inquest ought to be held without first sending for the coroner to view it (*g*), and it is also a misdemeanor to allow a body to putrefy without sending for the coroner.

But the body here referred to must be the body of a person, therefore the coroner cannot inquire if the body be that of a monster or an unborn infant (*gg*). Wellington tells us (*h*) that by the common law of England every infant is presumed to be born dead until the contrary is shown, but this does not seem reasonable and there is no basis for the remark in authority. We may therefore say that the coroner is justified in holding an inquest upon the body of an infant unless it is shown the infant was born dead.

Sect. 89. The coroner or justice of the peace in his absence may exhume the body without leave of court (*i*) if thereunto requested by the district attorney (*k*) in order

(*e*) *Ex parte* Schulz, 6 Wharton, 269 (1841); *Pickett v. Erie County*, 19 W. N. C. 60; s. c. 3 Pa. C. C. R. 23 (1887); *Rentschler v. Schuylkill County*, 1 Schuylkill Legal Record, 289 (1880); *Marvin Shaft Inquest*, 3 Pa. C. C. R. 10 (1887); *Burnett v. Lackawanna County*, 9 Pa. C. C. R. 95; s. c. 1 Lack. Jur. 410 (1890).

(*f*) *Burnett v. Lackawanna County* (*supra*).

(*g*) Per Gibson, C. J., in *Allegheny v. Watts*, 3 Pa. St. 462 (1846), and *Burnett v. Lackawanna* (*supra*).

(*gg*) Decision of Coroner Jermon of Philadelphia reported Philadelphia Evening Bulletin, August 10, 1906.

(*h*) The King's Coroner, Vol. II, p. 5.

(*i*) *Allegheny County v. Shaw*, 34 Pa. St., 307 (1859).

(*k*) *Pickett v. Erie County*, 19 W. N. C., 60, s. c. 3 Pa. C. C. R., 23 (1887).

to make an investigation. Indeed he may do so whenever the occasion requires (*l*). In the only recent supreme court case on the whole subject of coroners (*m*), it was held that the district attorney may exhume the body of one slain and make his own examination and that the evidence so procured should be admitted on the trial for murder without regard to what the coroner had done or omitted to do. The case decided as it is in the supreme court is beyond doubt the law of the commonwealth until it is reversed, but it is certain that it is a most remarkable and sweeping piece of judicial legislation. It degrades the coroner's office by making it worse than useless, giving to another officer all the powers of inquisition previously possessed by the coroner and creates a new system of inquest heretofore unheard of. The district attorney however may (*n*) and should aid the coroner. He should make all necessary investigations at the time of the inquest.

"In this enlightened age a coroner who would consign to the grave the body over which he had held an inquest without availing himself of the lights which the medical science has placed within his reach would in most cases fall short of what his official duty requires. A thorough examination aided by professional skill is in general absolutely necessary to the proper administration of justice. Without such examination, groundless suspicions may be entertained and prosecutions commenced at once cruel to the objects of them, expensive to the county and wasteful of the talents of all persons engaged in them. But this is not all. Without an examination of the body recently after death and a complete demonstration from the evidence thus in the power of the commonwealth that the death was caused by violence the guilty agent cannot be convicted. When from an omission to employ a physician to examine the body the cause of death is left in doubt the accused must in general

(*l*) Per Gibson C. J. in *Allegheny County v. Watts*, 3 Pa. St., 462 (1846).

(*m*) *Commonwealth v. Grether*, 204 Pa. St., 203 (1902).

(*n*) *Hopkins v. Chester County*, 1 Chester 481, s. c. 14 Lanc. Bar 88 (1878).

escape because in all cases of doubt he has a right under the law to demand an acquittal (o)."

Those cases are correct which say it is the duty of the coroner to employ a physician if necessary (p).

When is it necessary?

"Where a woman attended by a physician suddenly died and the coroner held an inquest *super visum corporis* and employed a physician to make a *post mortem* which proved the woman died by natural causes. Held, nevertheless the county is liable to pay him reasonable compensation" (q).

Yet in the face of such decisions, Church, P. J., says (r). It is a dangerous power to give the coroner or justice of the peace, the right to hire a physician. It should be exercised very cautiously.

Sect. 90. We have already seen (s) that there is a considerable doubt as to whether the coroner's inquest is to be considered a matter of public inquiry or merely a secret investigation, part of the criminal procedure of the state to which the public as such have no right to be admitted. The weight of the lower court cases seems to be cast on the side of privacy of the inquest. There are no decisions directly on the point. The conclusion we are forced to draw from the county court decisions is that the purpose of the inquest is only to investigate cases where crimes have been committed. The cases in the supreme court we have already seen do not support this view. When therefore we are called upon to analyse the effect of the decisions taken as a whole upon a question which none of them have directly touched, it is difficult to say which view would ultimately be taken by the supreme court were this point brought before it. The real basis of the privacy or publicity of the inquest depends

(o) Per Lewis C. J. *Northampton County v. Innes*, 26 Pa. St., 156 (1856), s. c. 3 P. L. J., 644.

(p) *Hopkins v. Chester County* (*supra*), *Pickett v. Erie County* (*supra*), but not two physicians. *Coroners Inquests*, 1 Pa. C. C. R., 14, s. c. 3 Kulp, 351; 2 Del. Co., 446; 3 Lanc. L. R., 70 (1885); Metzger's Inquest, 8 Dist., 573 (1899).

(q) *Northampton County v. Innes*, 26 Pa. St., 156 (1856). s. c. 3 P. L. J., 644.

(r) *Coroners Inquests* (*supra*).

(s) *Ante*, Sect. 54.

in part on the object of the inquest. On the whole we have seen the object in Pennsylvania is not merely the investigation of given offenses, but the determination of the cause of death for the purpose of ascertaining whether or no any crime has been committed. From this it would seem that the commonwealth has a vital interest in the inquest of the coroner. If this premise is correct it follows that the individuals who make up the commonwealth should have right of access to the inquest. There is another reason. Certain individuals have interests dependent on the result of the inquest. These persons it would seem ought not to be excluded from the coroners inquest. As we shall see it is the duty of the coroner to hear the testimony of all who can give information concerning the matters under investigation, and this seems to be a strong argument in favor of the publicity of the inquisition. It is his duty to receive evidence both for and against the commonwealth and it might well be asked how can the suspected party or parties be expected to produce sufficient or even intelligent evidence against the commonwealth unless they have a right to be present. Moreover depositions taken before the coroner are still in certain cases evidence (*t*) and how can this be unless the party against whom the depositions are to be used has a right to be present and cross examine. It may also be said that the inquest may still be quashed for irregularity and unless the parties have a right to be present there can be no check upon irregularities. On the other hand there are many equally weighty considerations. "It is obvious although the inquiry of the coroner is preliminary only, that it may and frequently does lead to an accusation. Such an inquiry ought for the purposes of justice in some cases to be conducted in secrecy. It may be requisite that the party suspected should not at so early a stage be informed of the suspicion that may be entertained against him, and the evidence upon which that suspicion is founded lest he should elude justice by flight, by tampering with the witnesses or by any other means" (*tt*). There may be cases in which privacy is requisite for the sake of decency or because

(*t*) See Peake on Evidence, 64; 2 Phil. & Arn. on Evidence, 110.

(*tt*) Jervis on Coroners, p. 240.

it is due the family of the deceased. So it may be argued that where the exclusion of the public at large is unnecessary that of some one person is requisite to the fulfillment of the ends of justice. To all this argument the answer is plain the coroner's court like every other court of this commonwealth is open and public, but the coroner is the judge of the court and may use his discretion to exclude whomsoever he sees fit to exclude that the ends of justice may be accomplished. Bearing in mind the purpose of the inquest is not to accuse, we may fairly say the coroner has power to admit to or exclude from his inquest according to his own discretion. For fair *bona fide* exercise of this discretion, no action will lie against the coroner (*u*). But the coroner should exercise judicial discretion in admissions and exclusions. Indeed unless he had such power it would be impossible that the proceedings should be conducted with due order and solemnity (*v*) even though it is a misdemeanor to interfere with the coroner in the exercise of his office. It would therefore seem that the coroner has the right to exclude not only an individual but the public generally from his investigation.

Taken from the other side we have the question whether or not the coroner has the right to have the accused brought before him at his inquest. Although the coroner holds a court in Pennsylvania, he is not a court of record (*w*). It would seem therefore that as the decision has been in England, where the coroner is a court of record, that he cannot force the criminal to be brought before him, *a fortiori* he has no such power in Pennsylvania.

Sect. 91. It has already been observed that the body is a large part of the evidence in the coroner's inquest. The marks or wounds upon the body should be carefully observed by the jury (*x*) and their length, breadth and depth carefully noted (*y*). Fleta tells us the body should be seen

(*u*) 6 B. & C., 611, nor for any other judicial act by him done.

(*v*) *Ante*, Sect. 54.

(*w*) *Edwards v. Gimbel*, 202 Pa. St., 30 (1902); *Commonwealth v. Higgins*, 5 Kulp, 269 (1889).

(*x*) *Britton*, c. 1, Sect. 7.

(*y*) 4 Edward I.

naked that all these marks may be observed (*z*). The jury must be sworn before the view is had (*a*) and the coroner and jury must view the body together. If the coroner views it at one time, the jury at another, the whole inquest is void (*b*).

It is the duty of the coroner to inquire impartially and fairly without prejudice or favor to any one or any view of the case. It is his duty to hear all the evidence that may be offered him (*c*). He is inquiring of facts and to those facts he is to be utterly impartial. He should be very careful not to instruct the jury upon the facts, but only upon the law for the jury are the judges of the facts not he. There is no requirement that the evidence shall be taken down, but the coroner must take down the "effect of the evidence." We may agree with East (*d*) that this does not mean the impression the evidence makes on his mind, but the meaning of the witnesses, as a matter of practice the coroner is always attended by a stenographer who takes down the evidence verbatim.

Sect. 92. "It has been doubted whether the parties interested in the inquiry are entitled to the benefit of counsel before the coroner's inquest (*a*). In one case of *felo de se* the court of king's bench quashed the inquisition because the coroner refused to admit counsel and witnesses on behalf of the administrator. There is however no decision applicable to other inquiries before the coroner and the case alluded to proceeded upon the supposition that inquisitions of *felo de se* were not traversable whereas it may be supported more properly upon another ground without reference to the admissibility of counsel, viz., the rejection of evidence. It was admitted in the argument of the case of *Cox v. Coleridge* that a party has a right to attend by counsel before the coroner's inquest, the point was not however noticed in the

(*z*) Fleta Lib., 1 cap. 25, Sect. 9.

(*a*) Jervis on the Law of Coroners, 256.

(*b*) *Burnett v. Lackawanna County*, 9 Pa. C. C. R., 95, s. c. 1 Lack. Jur. 410 (1890).

(*c*) *King v. Scorey*, 1 Leach, 43 (1749).

(*d*) 1 Pleas of the Crown, 384.

(*e*) This and the following paragraphs are quoted from Jervis on the Law of Coroners, p. 267.

judgment of the court, but Mr. Justice Bayley observed incidentally that the right depended upon the question whether or no the inquest were traversable. But with great deference to so high an authority it would seem that the right can in no case depend upon this criterion. The nature of the finding cannot be ascertained until all the witnesses are examined and the verdict returned at which period it would be fruitless to allow or disallow the attendance of counsel.

"If this be correct the question of abstract right must be considered without reference to direct authority and it would seem on principle to be at most but doubtful. There is nothing in the position of counsel to except them from the power of exclusion vested in the coroner and if they are allowed there is no reason why any other advocate skilled in the law should not be permitted to be present at the coroner's proceedings. If any advocate has the right to be present *a fortiori* the party suspected (for there can be no accusation until the inquiry is terminated) may be present also and undoubtedly the coroner may if he thinks fit exclude even the person suspected. If the party suspected or interested has a right to the assistance of counsel it is impossible to say that those in the opposite interest have not the equal right to have the presence and assistance of some legal adviser on their behalf, and if one may attend, why not several, If an advocate has a right to be present he may obtain such information as may tend to frustrate the administration of justice by knowing who the persons are who are likely to be accused and the evidence by which the accusation may be supported. The profession at the present day is too liberal, honorable and intelligent to furnish ground for objection on this score but the bare possibility is sufficient to determine the question of abstract right. It seems that the accused should have the right to be present with his counsel ordinarily.

"It by no means follows as a consequence that their admission on some occasions would confer a right to be present at all times.

"If it be not left to the fair discretion of the coroner whether he will or will not admit counsel that privacy which is due, not only to the ends of justice, where the inquiry

may terminate in accusation but also in many cases to the feelings of the family of the deceased, cannot be maintained. This exclusion may in some cases operate as a temporary grievance, but it is obviously a greater that the party suspected should be excluded; yet, that may be done if the coroner think proper, and it is better that there should be some hardship suffered in the individual case than that the public should sustain a great detriment.

"On the other hand it is obvious that there are many cases in which it may be expedient for the coroner to admit the presence of persons learned in the law. Wherever questions of doubt or difficulty may present themselves in the course of the inquiry it is fitting that both the court and jury should have the benefit of the attendance of counsel although coroners are in all cases presumed to be qualified to discharge their duties should such cases occur. * * * * * In fine the power of exclusion even of the public generally ought to be regulated by a due regard to the circumstances of each particular case and should in no instance be arbitrarily or improperly enforced."

Sect. 92a. We may suppose that the court of the coroner will be called in all manner of places. In Philadelphia County the coroner has a special court room, but even that is not always used. The court should be so arranged that the coroner has a good view of all that takes place and is able to hear all that is said. He should sit so that no one can pass behind him. Next the coroner the jury should be considered and should be seated so that they may both see and hear if possible with equal facility as the coroner himself. The foreman should sit nearest the coroner. In the absence of a witness box a chair should be provided opposite the jury and in front of the coroner. If there is a clerk to take the evidence he should sit between the coroner and the witness facing the latter. Seats should also be provided for counsel and medical witnesses. If a long table can be procured let the coroner sit at the head, the jury in a row on the right side, the clerk on the left facing the witness whose chair should be below that of the clerk and the lower end of the table should be reserved for counsel and the physicians. The public may be seated away from

the court and jury. Two separate tables should be provided one for the press, the other for the coroner's officers and police.

The clerk or one of the officers should open court in a clear audible voice as follows:

"The coroner's court is now opened. Jurymen will take their places in the jury box (these words may be omitted where there is no box) as their names are called."

The list of jurors should then be called and they should answer to their names. As we have seen it is wisest for the coroner to admit challenges to the jurors if any are offered. When the panel is completed, the coroner may summon any person present to complete it (*e*), the jury should be sworn. The oath usually administered is as follows:—

"You and each of you do solemnly swear that you will true inquiry make into the manner and cause of death of John Doe (and others) and a true and just verdict render according to the evidence submitted. So help you God." (*f*)

In some cases of course the jury will be sworn and taken to view the body before being brought into court at all. In such case the court proceeds with business as soon as opened. Some coroners address the jury before permitting them to hear evidence. There is no necessity for this and it is a custom that cannot be too strongly discouraged.

The view of the body should be had before any witnesses are heard. It is essential in order to prove the fact of death (being the best evidence) and also in many instances because in the absence of medical testimony it is an important factor in determining the cause of death. The marks of violence should be carefully shown to the jury, but the body need not be unnecessarily or indecently exposed, Fleta to the contrary notwithstanding. The jury should all view at the same time and the coroner should view with them.

Witnesses who are to identify the body should not be

(*e*) Within certain bounds as we have seen.

(*f*) Of course it is understood that those who have conscientious scruples against oaths may affirm.

allowed to see it before the jury do. They may be sworn and examined, however, in the presence of the body.

The coroner may give the burial certificate as soon as the view is completed, but if a *post mortem* examination is to be made the coroner should ascertain from the physicians what further evidence is needed and the burial should be postponed until such examination as the doctors think requisite has been made. In all cases it is wisest not to give the order until the jury have returned their verdict. Permission to cremate should only be given after the fullest consideration that no further examination can be necessary.

When the jury return to the court the officer should call over their names and so in case of an adjourned meeting. But what is to happen if one of the jurors should be absent does not appear. Of course the coroner can adjourn the meeting and can issue a warrant to have the delinquent brought in. But there must be at least six jurors and there cannot be more so that it would seem that if one juror disappeared and could not be found, the coroner must dismiss the jury and take another inquest. It is very well to say that in practice it never happens, but should it happen it would be most embarrassing.

These preliminary stages having been completed the coroner calls the witnesses who are sworn as follows:—

“You do solemnly swear that the evidence you are about to give in the matter now pending before the coroner will be the truth the whole truth and nothing but the truth. So help you God.”

The coroner may call whomsoever he pleases and in what order soever: But he cannot refuse to call any witness offered to him or who presents himself and desires to give his information, nor has he a right to refuse to examine any witness on the ground that his evidence might tend to criminate himself. The proper course is for the coroner to tell the witness that he is not bound to incriminate himself and then let him make what statement he pleases. One limit the coroner may put on witnesses, and that is this: if the witness will add nothing new but merely corroborate what has been said by previous witnesses the coroner is not

bound to hear him. But it is wisest to hear all the witnesses.

If witnesses are absent we have seen the coroner may compel their attendance, but there is considerable doubt as to whether or no the coroner's warrant may be executed out of his jurisdiction. The coroner's inquiry being preliminary he may hear testimony not upon oath but the jury should be most carefully instructed that such testimony is not evidence and that they must not base their verdict upon it. The safest way is to hear no such statements.

The coroner himself should first examine the witnesses and this from his preliminary examination of the case he is prepared to do intelligently. When he is through with his examination he should ask, "Is there any other question you would like me to put to this witness?" But if counsel attend the coroner as a rule permits them to examine or cross examine the witness when he has finished his own examination. The coroner is bound by no rules of evidence for his examination is but a preliminary one. It is moreover his duty to collect as far as possible all information concerning the case. Besides the coroner has no right to exclude proper evidence, his inquisition may be quashed on that ground, so that it is wisest if there is any doubt on the subject to admit the evidence. The immaterial and irrelevant statements thus brought out before the coroner may be very helpful to the police or the district attorney in investigating the case and producing the necessary evidence at the trial. Hearsay, *res inter alios acta*, admissions and confessions voluntary or involuntary may be admitted. But the coroner may well bear in mind that the best evidence is the only proper evidence and should get that first before admitting testimony which would be inadmissible in a court of law. He may also do well to bear in mind, 1, That every person is presumed to be sane until the contrary is proven; 2, That every person is presumed to be innocent of crime until the contrary is proven. 3, Every sane person who has reached years of discretion (fourteen) is conclusively presumed to intend the natural and probable consequences of his acts. 4, That homicide is presumed to be murder until the contrary is proven.

The evidence having been completed it becomes the coroner's duty to sum up. He should be careful not to instruct the jury upon the facts though he has a right to refresh their memories, but he should instruct them upon the law if any enters into the case. The jury may then retire to deliberate. What happens if they disagree is discussed elsewhere, in practice they never do. When they return the usual query is put to them and they announce their verdict.

When the jury has returned a verdict or when it becomes necessary to adjourn the inquest until a later day this may be informally done by the clerk or an officer upon instruction from the coroner announcing the adjournment. In Philadelphia the following form is used:

"The coroner's court now stands adjourned until tomorrow morning at ten o'clock (or as the case may be.)"

A question of interest has arisen lately in Philadelphia County as to the duty of the coroner to commit in homicide cases. Judge Sulzberger has laid it down generally (*g*) that the coroner should always commit persons found responsible for death. It is respectfully submitted that such is not the law. The coroner may have power to commit where the verdict is murder or manslaughter, though this has been doubted (*h*), beyond this he certainly has no power.

(*g*) Coroner's Duties, 20 Dist. 502 (1911).

(*h*) Walker *v.* McKean, 31 Pa. C. C. R. 664, 15 Dist. 577 (1905).

CHAPTER VIII.

EFFECT AND RETURN OF THE INQUEST.

Sect. 93. When the evidence is closed the coroner draws up the inquisition and he and the jurors set their hands and seals to it (*a*). It must be signed by the jurors in person by their full names, initials will not do (*b*). This completes the inquest and no second inquest can be held until the first is disposed of. We have no instance on record in Pennsylvania where a *melius inquirendum* was granted but the principles governing the matter are still in force.

There being no Pennsylvania statutes to govern, many loose practices have grown up about the manner of making the return. The necessity for a return to court is generally recognized and seems to be founded upon the statute of third Henry VII (*c*), which provides that the coroner must return and certify his inquisition into the next goal delivery or into the court of king's bench under pain of five pounds. We should expect to see the inquisitions in Pennsylvania returned before our court of oyer and terminer and general goal delivery or before the supreme court, but such is not the practice. In some countries the return is made to the court of quarter sessions (*d*) in others into the common pleas (*e*) while in Centre (*f*) and Lancaster Counties (*g*) the return is made before the county commissioners.

(*a*) 22 Assize, 94.

(*b*) Crosby's Case, 19 Pitts. L. J., 192; 3 Pitts., 425 (1872).

(*c*) 2 Statutes of the Realm (English) 510 (1487).

(*d*) Delaware, see Coroner's Inquests, 1 Pa. C. C. R., 667, s. c. 2 Del. Co., 446, 475 (1885); Fayette, see Fayette County Coroners Return, 24 Pa. C. C. R., 498 (1900); Lackawanna, Marvin Shaft Inquest, 3 Pa. C. C. R., 10 (1887), and Perry, but in Perry the justices of the peace return their inquisitions into the common pleas, Grubb's Case, 3 Pa. J. L. R., 79 (1904).

(*e*) Clearfield, Jones's Case, 1 Pa. C. C. R., 19 (1885), and see Grubb's Case, 3 Pa. J. L. R., 78 (1904), as to Perry the justices of the peace return their inquisitions into the common pleas where they are laid over pending exceptions.

(*f*) Burn's Case, 5 Pa. C. C. R., 548 (1888).

(*g*) It was so argued by J. W. Johnson in Lancaster County *v.* Mishler, 100 Pa. St. 624 (1882).

The coroner's inquest in Pennsylvania seems to have ceased to have the effect of an indictment, therefore the strictness requisite in drawing up the return which pertained in England has gradually been slackened until now no form is required though certain essentials are still necessary (*h*). It seems it is not necessary for the coroner's return to show on its face "when, where and how the coroner was called" nor set forth that there were suspicions of foul play (*i*). But wherever the special act of 1866 is in force, it is requisite that the occasion for the interposition of the coroner should appear and the simple statement that "there was strong suspicion of violence such as to make an inquest necessary" is not enough (*k*). It can be presumed that the coroner acts in good faith it is reasonable that such statement should be held sufficient, but in Smith's Case (*l*), it was decided that the court cannot presume any thing to justify the coroner in holding the inquest, that the return does not show on its face. So under the act of 1897 (*m*) where the coroner makes a return that no inquest is necessary he should state that he was called upon to act and by whom and should add a brief of the statements made to him (*n*). In this connection it must be remembered that the sole purpose of this act is to give additional fees and that under it the return may well be different (*o*) from the return where an inquest is taken (*p*).

But as we have observed there are certain essentials in substance that cannot well be omitted, the nature of the death should be most specifically set out (*q*). The return

(*h*) Marvin Shaft Inquest, 3 Pa. C. C. R., 10 (1883); Coroners Inquest, 1 Pa. C. C. R., 14 (1885); Crosby's Inquest, 19 P. L. J., 192; 3 Pitts., 425 (1872); Fayette County Coroners Inquest, 30 Pa. C. C. R., 321; 35 P. L. J., 265; Del. 431 (1904), for a form, see *ex parte* Schulz, 6 Wharton, 269 (1841).

(*i*) Fayette County Coroners Return, 24 Pa. C. C. R., 498 (1900).

(*k*) Smith's Case, 4 Lanc. L. R. 302 (1867).

(*l*) *Supra*.

(*m*) P. L. 8.

(*n*) Fayette County Coroners Return (*supra*).

(*o*) Besides it must comply with the terms of the act.

(*p*) So a deputy coroner is entitled to no fee where no inquest is taken, *re* Missiner, 20 Mont. 200, s. c. 3 Pa. J. L. R., 88; 18 York, 115 (1904).

(*q*) King *v.* Solway, 3 Modern, 100 pl., 61 (1686); Anonymous, 12. Modern, 112 (1697).

should state the inquisition was upon view (*r*) of a dead body and where the death occurred. If a crime has been committed it should be stated by whom (*s*) or that it was committed by a person unknown (*t*). The return should specify the names of the jurors (*u*) but it is highly improbable that it would be quashed if it did not. It must state that the jurors were sworn (*v*). It should contain in cases where murder or manslaughter is found (*w*) the effect of the evidence under the statute of 1 and 2 Phillip and Mary Chapter 13, which is still in force in Pennsylvania (*x*).

There is no other statute in force in Pennsylvania requiring the coroner to reduce to writing the evidence of witnesses testifying before him (*y*). In these days of shorthand and typewriting it has come to be the practice to report the whole testimony and attach a full transcript thereof to the inquisition. All that is required is "to put in writing the effect of the evidence given to the jury before the coroner (*z*) not the evidence itself." The usefulness of the testimony ceases with the finding, it need not be preserved, it is only to aid in the finding (*a*), but it is easier to attach a transcript and that is the almost universal custom.

As we have already noticed the learning in relation to the *melius inquirendum* in England has become obsolete in Pennsylvania. The coroners in Pennsylvania do not seem to have been so prone to misbehave as were those in England. What should be done in case the jury disagree does not clearly appear. It seems probable that the coroner should dismiss them and hold another inquest. But should

(*r*) But see Ralston's Petition, 9 Dist., 514, s. c. 30 P. L. J., 410 (1900) where it was held in effect that the jury does not have to view the body.

(*s*) Regina v. Stockdale, 8 Dowl. P. C., 516 (1840).

(*t*) 2 Hale's Pleas of the Crown, 64-65.

(*u*) Pinner's Case, Croke's Elizabeth, 31 pl., 4 (1584); Staundeford's Pleas of the Crown, 51; Fitzherbert's Abridgment Title Coroners, 107.

(*v*) Britton, chap. 1, Sect. 6.

(*w*) Edwards v. Gimbel, 202 Pa. St., 30 (1902).

(*x*) 3 Binney, 621.

(*y*) Marvin Shaft Inquest, 3 Pa. C. C. R., 10 (1887), says notes of testimony cannot be filed.

(*z*) 1 & 2 Philip & Mary, cap. 13; 4 Statutes of the Realm, 250 (1554).

(*a*) Weaver v. Northampton County, 2 Lehigh Valley, 408 (1887).

the jury misbehave otherwise, it is doubtful what should be done. If they find facts wholly unwarranted by the evidence it seems that a *melius inquirendum* should be granted (*b*).

Sect. 94. When the coroner returns his inquest the approval of the court is not required in order to establish the validity of the proceedings, but no fees will be paid the coroner without such approval. But the validity of the inquest is not effected by the action of the court and it would sustain a commitment even though the court refused the coroner fees (*c*). Amendments are freely allowable (*d*) so that an inquest is never discharged for a defect if the defect is capable of being remedied by amendment. *Certiorari* is still the proper method of forcing a return (*e*). In the only reported case where it has been tried it was held to be improper upon facts which lead us to doubt if it is ever proper. In *Ralston's Petition* (*f*) an attempt was made to remove the proceedings from before the coroner to the common pleas by *certiorari*. The petition to that end set forth that the jury did not view the body and that *ex parte* affidavits were read to them. The court however decided it was not a proper case for *certiorari*. It is difficult to see how the court could reach this conclusion without deciding that it was unnecessary to hold the inquest *super visum corporis*, and that witnesses need not appear before the inquisition.

Sect. 95. Hawkins heads the thirty-third section of the ninth Chapter of his *Pleas of the Crown* "what high credit the law gives to an inquisition of death before a coroner." We have observed what weight was anciently given. But to a student of modern coroner's law and practice the remark is well nigh incredible. It is now doubtful whether a

(*b*) *King v. Heathershall*, 3 Modern, 80 (1680). But see *ante* Sect. 52, note (*h*).

(*c*) *Reitlinger's Case*, 2 Kulp. 127, s. c. 14 Lancaster Bar, 123; 3 York, 101; 11 Luz. L. Reg., 157 (1882).

(*d*) *Fayette County Coroners Return*, 30 Pa. C. C. R., 321, s. c. 35 P. L. J., 265; 9 Del. Co., 431 (1904); *Metzger's Inquest*, 8 Dist., 573 (1899).

(*e*) So argued by J. W. Johnson in *Lancaster County v. Mishler*, 100 Pa. St., 624 (1882) and *obiter* in *Ralston's Petition*, 9 Dist., 514, s. c. 30 P. L. J., 410 (1900).

(*f*) *Supra*.

coroner's verdict is sufficient to found criminal proceedings upon, it has been said there must be other preliminary proceedings (*g*). Indeed in this state the coroner's verdict has been said to have no legal effect at all (*h*). It is not surprising therefore that the rule should be inflexible that where a coroner having jurisdiction in a particular case makes a sufficient record of the inquest, the regularity of the finding cannot be impeached in a collateral proceeding (*i*). We are almost reminded that *de minimis non curat lex*.

Sect. 96. Evidence taken before the coroner cannot be admitted in a subsequent trial arising out of the matter of inquiry to discredit a witness unless it is duly proved by the coroner (*k*). The inquest itself is not admissible to prove suicide on the part of a defendant life insurance company (*l*).

(*g*) 14 Albany Law Journal, 337 (1876); 11 American Law Register, 482.

(*h*) 11 American Law Reg. 482; Ralston's Petition (*supra*).

(*i*) Lancaster County *v.* Mishler, 100 Pa. St., 624 (1882); *sed quare*, Lancaster County *v.* Dern, 2 Grant., 262 (1852).

(*k*) Edwards *v.* Gimbel, 202, Pa. St., 30 (1902).

(*l*) Reynolds *v.* Supreme Conclave, 19 Lanc. L. R., 129, s. c. 2 Blair Co., 210 (1902).

CAPTER IX.

THE CORONER'S DUTIES IN REGARD TO MINES.

Sect. 97. Two duties have been imposed upon the coroner in Pennsylvania quite different from those required of him at common law. The first of these is the duty in regard to mines. While it may in general be said that every thing the coroner is required to do in regard to mines is a part of his common law duties, the statutes upon the subject define his duties more specifically and limit and enlarge them in such particulars as to make it necessary to consider the subject distinctly. The act of 1891 (*a*) provides that in the case of anthracite mines the mine inspector and not the coroner shall visit the scene of any accident in a mine wherein lives have been lost or are put in danger and he not the coroner shall determine whether or not an inquest shall be held (*b*). If he determine that an inquest is necessary he notifies the coroner to hold the inquest without delay. The coroner then appears and holds a second preliminary investigation. If he determines that no inquest is necessary none is held by him (*c*). But unless he does hold an inquest (and that within twenty-four hours) the inspector has the right to go on with the inquest without the coroner (*d*). But if the coroner determines to hold an inquest he must do so in the presence of the inspector. If the inspector be not present when the inquest is called the coroner must adjourn the inquest to a future day giving the inspector three days' notice of the time and place of the inquest (*e*). Indeed the coroner must notify the inspector under any circumstances of the time and place of holding the inquest and the inspector has a right to be present and examine witnesses (*f*).

(*a*) 2 June 1891 Art. 13 P. L. 202.

(*b*) Sect. 2 of the above act.

(*c*) Mestrezat P. J. in Approval of Coroners Inquest, 7 Dist., 566, s. c. 2 Docket 65 s. c. *sub nom* Coroners Inquests, 20 Pa. C. C. R., 660 (1896).

(*d*) Act of 2 June, 1891, Art. 13, Sect. 2 P. L., 202.

(*e*) Sect. 3 of the above act.

(*f*) Sect. 4 of the above act.

If the coroner fail to notify the inspector he is without jurisdiction (*g*). His jurors are moreover limited to those not employed in the mine or colliery where the accident happened nor interested otherwise in the proceedings (*h*). If the coroner finds the death to have been due to negligence it becomes his duty to notify the inspector to remedy the defects (*i*). From these provisions it appears that the inquests held under this act have a different standing from the common law coroners inquest (*k*). On the other hand "it is not every accident resulting in death which under the mining laws justifies a coroner's inquest. It is only such an accident resulting in death as would appear to be the result of some manifest neglect on the part of the operator of the mine. A death which is the result of the miner's own neglect or carelessness is not one which justifies an inquest. Nor is a death which is a pure accident" (*l*). But while under such circumstances the coroner may refuse to inquire there is nothing in the act to prevent the mine inspector from holding his inquest.

"The act of May 15, 1893 (*m*) requires the persons having charge of a bituminous coal mine to give notice to the coroner, of any person killed by reason of any explosion or other accident in said mine" (*n*). In this case the coroner is to make the preliminary investigation. Should it appear that the death was due to the miners' own carelessness or neglect no inquest should be held (*o*). But if the coroner determines to hold the inquest, then he must notify the mine inspector who must attend under practically the same con-

(*g*) *Commonwealth v. Norris*, 13 Kulp's Luzerne Legal Register, 1 s. c. 15 Dist., 821 (1905) and unless he sets out these facts in his return the inquest will be quashed.

(*h*) Sect. 6 of the act of 1891 (*supra*).

(*i*) Sect. 5 (*supra*).

(*k*) Or those under the special act of 1866, *Smith's Case*, 4 Lanc. L. R., 302 (1887).

(*l*) *Marvin Shaft Inquest*, 3 Pa. C. C. R., 10 (1887); *Cochrane's Case*, 12 Dist., 477 s. c. 27 Pa. C. C. R., 282; 2 Pa. J. L. R., 27 (1903).

(*m*) Art. 12, Sect. 1, P. L., 72. This act has been replaced by Article 17, §§ 1, 2, 3 and 4 of the Act of June 9, 1911, P. L. No. 319, which substantially re-enacts the previous provisions.

(*n*) *Approval of Coroner's Inquest*, 7 Dist., 566; s. c. 2 Docket, 65, s. c. *sub nom* *Coroner's Inquests*, 26 Pa. C. C. R., 660 (1896).

(*o*) *Jones's Case*, 1 Pa. C. C. R., 19 (1885); *Approval of Coroner's Inquests (supra)*; *Cochrane's Case*, 12 Dist., 477, s. c. 27 Pa. C. C. R., 280; 2 Pa. J. L. R., 27 (1903).

ditions as those which appertain to anthracite mines. The jury also is similarly qualified. But if the coroner does not hold an inquest it is expressly provided the inspector shall (p).

"When the coroner or his deputy holds an inquest pursuant to a notice under these acts of assembly, the fact that such notice was given together with the necessity for holding the inquest should appear in the return" (q), and the simple statement that "there was strong suspicion of violence such as to make an inquest necessary" is not enough (r). Nothing is to be presumed in such cases not even that the coroner acts in good faith. "We will go so far" said Archbald, J. (s) "as to presume that this was the case of an employee in or about a mine or colliery and that the inquest was made after notice from the mine inspector to the coroner so as to bring it within Article 14 of the act of 1885 (P. L. 244). But this is going a good way and we would advise the coroner in future to set forth such matters in his return if the court is called upon to approve them."

(p) Act of 15 May, 1893, Art. 12, Sect. 3, P. L. 72.

(q) Approval of Coroners Inquests (*supra*).

(r) Smith's Case (*supra*). For forms of return which were rejected and the reason for rejecting them see *Commonwealth v. Norris*, 13 Kulp (Luzerne Legal Register), 1 s. c. 15 Dist., 821 (1905).

(s) Evan's Inquest, 4 C. P., 89 (1887).

CHAPTER X.

THE CORONER'S DUTIES IN REGARD TO MORGUES.

Sect. 98. As we have already seen the coroner's duties have recently been increased by adding thereto obligations wholly foreign to the ancient duties of the office. Another of these is the regulation and management of the morgue. The morgue is an institution of comparatively recent date on Pennsylvania soil (*a*). By the Act of 1899 (*b*) the county commissioners in every county are authorized, upon the presentment of two successive grand juries of the county, to erect and maintain a morgue "for the reception and care of the bodies of all unclaimed deceased persons upon whom it may be necessary to hold a coroner's inquest and such other bodies as the coroner of such county may by written order direct to be received therein," provided that any dead body found in any public place or the body of any unknown person shall be removed to the morgue. It therefore appears that where a morgue has been established it is the duty of the coroner to remove any body upon which he deems it necessary to hold an inquest to the morgue. He has no right to take it elsewhere.

In counties where there is no public morgue if a private one has been established the coroner has the right to remove thereto all dead bodies that may be found in any public place, or the body of any unknown deceased person on which it may be necessary to hold a post-mortem or inquest (*c*).

The coroner is the chief executive officer of the morgue. He may make such rules and regulations for the government thereof as he sees fit. He has power to appoint all persons connected therewith and to fix their salaries unless there is a salary board in the county. He may remove his appointees at pleasure.

(*a*) The Act of 12 June, 1893, P. L., 457, is the first statutory mention of morgues in Pennsylvania.

(*b*) Act of 18 April, 1899, P. L. 52.

(*c*) And the Salary Board shall fix the compensation to the owner of the morgue, Act of 8th June, 1911, P. L. No. 288.

The bodies received at the morgue pass into the control of the coroner who has full power to have them embalmed or preserved for such length of time as he deems proper. He may exclude all visitors from sight of any such body or may admit whomsoever he pleases. Bodies can only be removed from the morgue for burial upon his certificate in writing. But after the inquest the coroner has no control over the body (*d*).

All clothing and personal property brought to the morgue belonging to the dead bodies there passes into the control of the coroner. He keeps them for one year, if unclaimed in the interval, at the end of which time those remaining are sold at public sale and the proceeds paid over to the county treasurer (*e*).

These duties are purely ministerial and may, therefore, even in the absence of statutory authority, be delegated by the coroner.

(*d*) Both at common law and by the Act of 16th April, 1907, P. L. 92.

(*e*) There are lengthy provisions in the Act of 1899 regarding the sale of these goods not necessary to be considered here.

CHAPTER XI.

MINISTERIAL DUTIES OF CORONERS.

Sect. 98a. The coroner's chief ministerial duty is to act as substitute for the sheriff "when exception can be taken to the sheriff for suspicion of partiality (as where he is interested in the suit (*a*), or is kindred to either plaintiff or defendant) (*b*) the process must then be awarded to the coroner instead of to the sheriff for the execution of the king's writs" (*c*). In all proceedings against the sheriff, process should be awarded to the coroner (*d*). So much of the common law is in force in Pennsylvania today (*e*). But the statutes have decidedly enlarged the coroner's ministerial duties. Thus under the common law the coroner acts as a substitute for the sheriff and not in place of the sheriff and therefore if the sheriff is dead or removed (*f*) or if for any reason there is no sheriff (*g*) the coroner could not act but the Act of 1803 (*h*) provides:

"If any sheriff shall be legally removed from his office, or shall die before the expiration of the term for which he shall have been commissioned, the coroner of the same county shall execute the office of sheriff, and perform all things thereunto appertaining, until another sheriff shall be

(*a*) *Weston v. Coulston*, 1 W. Blackstone's Reports, 506 (1763) and see 27 Assize, 47.

(*b*) Comyn's Digest Title Officer G.

(*c*) 1 Blackstone's Commentaries, 349, but only at the petition of the parties; 22 Henry VII, 41b; see 4 Modern 65, and see *Smith v. Nicola*, 6 Dist., 595, s. c. 19 Pa. C. C. R., 440 (1897).

(*d*) 7 Henry VI, 33a; 36a "*per Newton & non negatum*."

(*e*) This statement may seem bold in view of the Act of 22 May 1722, 3 Statutes at Large, 307, providing that coroners shall in case of the disability of the sheriff execute *testatum* writs or be amerced for neglect, the Act of 12 Jany. 1705, 2 Statutes at Large, 231, providing he shall serve writs of attachment under like circumstances and the Act of 27 Nov., 1700, 2 Statutes at Large, 29, providing he shall serve writs of foreign attachment under like circumstances. Our forefathers seem to have for the moment forgotten that the coroner was a substitute for the sheriff in all cases, but the common law no doubt prevails at this time, *Smith v. Nicola*, 6 Dist., 595, s. c. 19 Pa. C. C. R., 440 (1897).

(*f*) 22 Henry VII, 41b, see 4 Modern, 65.

(*g*) *King v. Warrington*, 1 Salkeld, 152, pl. 2 (1692).

(*h*) Act of 28th March 1803, Sect. 75, P. L. 497, 4 Sm. L. 48.

duly commissioned and notice thereof given to such coroner."

The Act of 1834 (i) which seems to somewhat extend the common law, is as follows:

"The several duties hereby enjoined upon the sheriffs of the several counties relative to selecting, summoning and returning jurors as aforesaid shall in case of death resignation, removal from office, inability or incompetency of any sheriff to act be performed by the coroner of the respective county, and the coroner performing such duties shall be subject to all and singular the provisions herein enacted in relation to the sheriffs and in case of death, resignation, removal from office, inability or incompetency of the sheriff and coroner to act by a disinterested person to be appointed for the purpose by the Court or any two Judges of the Court of Common Pleas of the respective counties," and section one hundred and thirty-two provides, "whenever the sheriff of any county shall be incompetent to perform in any case which may be depending and for trial by jury as aforesaid, the duties hereby enjoined the coroner of such county being otherwise competent shall have power concurrently with the commissioners thereof to execute the writ of *venire* for the grand jury in the manner aforesaid."

The sheriff must be an absolutely improper person before process can be awarded to the coroner (k). But when process has once been awarded to the coroner, the sheriff cannot thereafter intromit (l), for he has ceased to be an officer in the case (m). Even if the sheriff should die or be removed from office or his term should expire and a new sheriff be elected who is not exceptionable, process must nevertheless be awarded to the coroner (n), and process

(i) Sect. 131, P. L. 364.

(k) King v. Warrington, 1 Salkeld, 152, pl. 2 (1692).

(l) 2 Henry VI, 12a, 21a; 18 Edward IV, 7b; 14 Henry VII, 31b; Skinner, 102; 43 Edward III, 26 *et per* Lee, C. J., Palmer 370 (1624); Morgan v. Wye, Croke's Elizabeth, 574 (1594); Corne v. Pastow, Yelverton, 15 s. c. Croke's Elizabeth, 894 (1602); see Moore, 365; 5 Coke's Reports, 36; Sairbl. v. Candith, Yelverton, 214 (1612); Gregory v. Booker, Croke's Elizabeth, 586 (1598).

(m) Corne v. Pastow, Yelverton, 15, s. c.; Croke's Elizabeth, 894 (1602).

(n) Moore, 356-422.

issued to the new sheriff is error (*o*), but it is cured by the statute of jeofails.

By the Act of 22 April, 1850, (*p*) where the sheriff is a party and there is no coroner in commission, it is made lawful for any constable in the county to perform the duties which would otherwise fall upon the coroner. The act is in derogation of the common law and therefore should be strictly construed. That being the case if the sheriff and coroner are both parties to the suit the Court must appoint elisors (*q*) to serve the process. So if the sheriff be exceptionable for any other reason than because he is a party to the suit and the coroner be exceptionable or there be no coroner elisors must be appointed. Once elisors have been appointed neither the sheriff nor coroner may intromit though both be changed and unexceptionable officers come into office (*r*).

The coroner when acting as sheriff may if necessary summon the *posse committatus* (*s*). The coroner acting as sheriff is subject to all the laws relating to sheriffs in every particular. But this is beyond the present subject, it would be surplusage here to consider the matter.

Another obligation however has been imposed on the coroner in Pennsylvania, which was no part of his duty at common law. This is the duty to act as prothonotary. Though the coroner is not often called upon to act as prothonotary the Act of 16th June, 1836 (*t*), provides:

"In all suits or actions in which the prothonotary of the Court shall be a party or in which he may be interested, the duties herein before (*u*) required to be performed by him shall be performed by the recorder of deeds, the clerk of the Orphans' Court, the sheriff, coroner or treasurer of the same county."

(*o*) Moore, 356.

(*p*) Sect. 19, P. L., 553.

(*q*) 2 Wm. Blackstone's Reports, 911; see 8 Henry VII, 12; Dyer, 367.

(*r*) 15 Edward IV, 24; 18 Edward IV, 8.

(*s*) Hobart, 85.

(*t*) Sect. 35, P. L. 724.

(*u*) In arbitrations.

CHAPTER XII.

ACCOUNTS AND COMPENSATION OF CORONERS.

Sect. 99. Only a *de jure* coroner can claim any compensation of his services (a) although one *de facto* may in some other respects bind the county. It was said in a recent case (b) that there are only five legitimate items of expense for the coroner (1) for viewing the body \$2.75, (2) the fee to the surgeon for making the post mortem where such an examination is necessary, a reasonable amount (3), summoning and qualifying the inquest \$1.37½, (4) summoning and qualifying each witness 25c., (5) mileage. Where there is more than one inquest to be held at a time the first four charges duplicate with each additional inquest, but mileage can only be charged once (c). The fees of the coroner are based (except in such counties as are provided for by special acts) upon the Act of 28 March, 1814 (d) which reads as follows:

“The fees to be received by the coroner of each county shall be as follows viz., for viewing a dead body two dollars seventy-five cents, summoning and qualifying inquest, drawing and returning inquisition one dollar thirty-seven and a half cents, summoning and qualifying each witness twenty-five cents to be paid out of the goods and chattels lands or tenements of the slayer in case of murder or manslaughter if any he hath, otherwise by the county with mileage from the court house to the place of viewing the body; executing any process or writs of any kind the same fees as are allowed to the sheriff and the same mileage.”

Sect. 100. This act supplies and repeals all prior legislation on the subject. The early laws upon this subject are so interesting, it may be well to pause for a brief digression to consider them. A fee bill was passed at Upland (since

(a) *Pickett v. Erie Co.*, 19 W. N. C., 60, s. c. 3 Pa. C. C. R., 23 (1887).

(b) *Marvin Shaft Inquest*, 3 Pa. C. C. R., 10 (1887).

(c) *Ibid*, and see *Fayette County v. Batton*, 108 Pa. St., 591 (1885).

(d) Sect. 19, P. L., 363.

Chester) in 1682 (*e*) but what it contained we cannot now ascertain. The Act of March 1st, 1683, (*f*) passed at Philadelphia immediately took its place. It provided coroner's fees shall be as follows:

Viewing a dead body	10s
A warrant to summon inquest	2s
Entering the verdict of the inquest	1s
Returning the inquest	1s
To inquest per man	1s
Arresting the sheriff	3s
Or for any other he arrests for the sheriff	3s

By the Act of 27 November, 1700, (*g*) the fees of the coroner were again fixed at the same figures as in the prior act except that the inquest now received three shillings per man instead of one. By the Act of 28 February, 1710-11, (*h*) the fees of the coroner were again regulated and somewhat reduced and it was directed he should post a table of his fees in a conspicuous place in his office and should give where demanded a bill of particulars and a receipt. This act was repealed by the Queen in Council February 20, 1713. The provisions of the act were at once re-enacted (*i*).

In 1722 (*k*) the fees were fixed as follows:—

For viewing the body,	10s
For summoning the inquest, entering the verdict and returning the inquisition,	10s
For summoning or arresting the sheriff or any other person for him,	6s 6d
For traveling charges each mile (<i>l</i>)	2d

(*e*) Laws of the Province, cap. CXXIX, p. 148, see remarks of Archbald, J., in *Burnett v. Lackawanna Co.*, 9 Pa. C. C. R., 95, s. c. 1 Lack. Jur., 410 (1890).

(*f*) Chapter CXXIX, Duke of Yorke's Book of Laws, 48 re-enacted by Sect. 20 of the Act of 15 May, 1693, Duke of Yorke's Book of Laws. 235.

(*g*) Sect. 1, 2 Statutes at Large, 138 allowed to become a law by lapse of time.

(*h*) Chapter CLXIX, 2 Statutes at Large 348.

(*i*) By the Act of 28 May, 1715, 3 Statutes at Large, 111-2, repealed by the Lords Justices in Council Aug. 25, 1710.

(*k*) By the Act of 30 March, 1722-3, Chapter CCLXX, Sect. 2, 3 Statutes at Large 372-8 which after having been allowed to become a law by lapse of time was repealed by the Act of August 22, 1752.

(*l*) This is the first provision for mileage for the coroner on the Statute Books.

This act was repealed by the Act of August 22, 1752, (m) which re-established the same fees except for arrests, the fees for which were reduced.

In 1778 (n) coroner's fees were doubled, no doubt because of the depreciation in the currency. In 1779 they were made treble what they were by the Act of 1778 (o).

(m) Chapter CCCXCVIII, Sect. 1. confirmed by the King in Council, May 10, 1753, 5 Statutes at Large, 166.

(n) By the Act of 26 March, 1778, 9 Statutes at Large, 229, which was repealed by the Act of 16 March, 1779, 9 Statutes at Large, 320.

(o) By the Act of 16 March, 1779, Sects. 3 and 4, 9 Statutes at Large, 320.

By the Act of 23 February, 1870, Sects. 1, 2 and 3 P. L., 226, it was provided Sect. 1, that the fees of the coroner of Erie County shall be the same as hereinafter ascertained and appointed.

For legally viewing a dead body, three dollars, for legally summoning and qualifying an inquest, drawing and returning an inquisition four dollars.

If it requires more than one day to view a dead body and hold an inquisition an additional two dollars for each day necessarily occupied in the discharge of the coroner's duty.

For each jurymen for each day necessarily occupied in making an inquest one dollar.

For each mile circular necessarily traveled by the coroner, six cents.

For subpoenaing and notifying each witness thirty-seven cents.

Sect. 2. A justice of the peace holding an inquest shall receive the same fees as a coroner.

Sect. 3, The County of Erie shall pay the coroner and justices all fees for services justly performed or of their duties in the office of coroner.

The Act of 9th March, 1867, Sect. 1, P. L., 382, provides:

That the fees of the coroner of Cambria County from and after the passage of this act shall be as follows:

Viewing a dead body four dollars.

Summoning and qualifying an inquest, drawing and returning an inquisition, two dollars and a half.

Summoning and qualifying each witness twenty-five cents.

Mileage 5 cents per mile for each mile traveled in making return.

The Act of 9th March, 1868, Sect. 1, P. L., 382, provides:

That from and after the passage of this act the fees to be received by the coroner of Allegheny County in lieu of those now allowed by law shall be as follows:

Viewing a dead body, five dollars and fifty cents.

Summoning inquest and returning inquisition two dollars and seventy-five cents.

Summoning and qualifying each witness twenty-five cents.

Each mile circular traveled to be reckoned from the court house to the place of viewing the body, ten cents.

This was extended to Northampton County by the Act of 17th April, 1869, Sect. 1 P. L., 1119, to Lycoming by the Act of 31st March, 1870, Sect. 1, P. L., 695; to Beaver by the Act of 18th Feby., 1871, Sect. 1 P. L., 106, to Bucks by the Act of 1 April, 1868, Sect. 1, P. L., 544, to Schuylkill by the Act of 26 March, 1868, Sect. 1, P. L., 495.

By the Act of 27 November, 1779 (*p*), it was provided that coroners fees might be paid in wheat but though the statute has never been repealed, it is doubtful if the coroner would accept to-day a tender made in that way.

By the Act of 1834 (*q*) "The auditors of each country, any two of whom when duly convened shall be a quorum shall audit settle and adjust the accounts of the commissioners, treasurer and sheriff and coroner of the county and make reports thereof to the common pleas of such county together with a statement of the balance due from or to such commissioners, treasurer, sheriff or coroner."

Sect. 101. The law coroners fees is pernicious throughout. It being granted by the overwhelming weight of authority that the holding of an inquest is a matter wholly within the coroner's discretion it would seem from principle that his fees should be allowed whensoever he sees fit to hold an inquest, unless there is a clear abuse of discretion. In the case of the King *v.* The Justices of Kent (*r*) however for the first time in legal record fees were refused to the coroner on the ground that there was no reason for holding the inquisition. In Pennsylvania this doctrine found an opening wedge in Northampton County *v.* Innes (*s*). In that case the deceased died in his own home surrounded by his family. It was said that these facts might be used as an argument by the county against the coroner's claim for fees for the inquest on the ground that it was unnecessary this inference was made law in Lancaster County *v.* Mishler (*t*). It may be true that "it is no part of the coroner's duty to hold inquests for the protection or vindication of individuals and the county cannot be charged with the expense of one held for such a purpose. As we have already said the object of the inquest is to detect and aid in the punishment of

(*p*) Sect. 3, 10 Statutes at Large, 39.

(*q*) Sect. 48 P. L. 545.

(*r*) 11 East 229 (1809).

(*s*) 26 Pa. St., 156; 3 P. L. J., 644 (1856).

(*t*) 100 Pa. St. 624 (1882), and see *Pickett v. Erie County*, 19 W. N. C., 60, s. c. 3 Pa. C. C. R., 23 (1882); *Lee's Case*, 9 Pa. C. C. R., 474 (1891); *Coroner's Inquests*, 28 Pa. C. C. R., 428 (1903), and *McFadden v. Chester County*, 10 Pa. C. C. R., 124, s. c. 7 Mont., 149 (1891).

crime; where the death is free from the suspicion of crime and is apparently from natural causes no inquest is necessary" (*u*). But it can scarcely be conceded that the Court is judge of the necessity for holding the inquest (*v*) and that if no inquest is deemed by them to have been necessary no fees should be paid, though the overwhelming weight of common pleas and quarter sessions authority supports such a view (*w*). The only recent appellate decision *Miller v. Cambria County* (*x*) goes to the length of saying that if the coroner act without sufficient cause the county is not liable for his fees. This must be the law of the commonwealth but it is respectfully submitted it is very carelessly worded. The more careful opinion in *Fayette County Coroners Return* (*y*) is more correct. If the coroner investigates without being satisfied in his own mind that it is necessary he cannot hold the county; to support this view we have the innumerable cases which hold that the decision to hold or not to hold an inquest is a judicial determination (*z*). It seems as though the rule should be that this determination should be final unless there is an abuse of discretion, but the county courts go upon the theory that "he must exercise his discretion wisely" (*a*) and "the courts are to determine not whether there was reasonable cause for holding an inquest but whether there was reasonable cause for holding the inquest which is asked to be approved" (*b*) giving them an *ex post facto* power to refuse to pay the

(*u*) Per Hemphill, J., *McFadgen v. Chester County*, 10 Pa. C. C. R., 124, s. c. 7 Mont. 149 (1891).

(*v*) As was said in *King v. Justices of Kent* (*supra*).

(*w*) *Lee's Case* (*supra*) *Fayette County v. Batton*, 108 Pa. St., 591 (1885); *McFadgen v. Chester County* (*supra*); *Burn's Case*, 5 Pa. C. C. R., 548 (1888), *Pfouts's Case*, 7 Pa. C. C. R., 265 (1889); *Witmore's Case*, 3 Dist., 699, s. c. 14 Pa. C. C. R., 463 (1894).

(*x*) 29 Superior, 166 (1905).

(*y*) 24 Pa. C. C. R., 498 (1900).

(*z*) *Fayette County Coroners Return*, 24 Pa. C. C. R., 498 (1900); *Commonwealth v. Higgins*, 2 Kulp, 269 (1889).

(*a*) *Weaver v. Northampton County*, 2 Lehigh Valley, 408 (1887), though in the same opinion it is said "but if he acts unwisely it is neither in the power of the court nor the commissioners to rectify such acts."

(*b*) *Reitlinger's Case*, 2 Kulp 127, s. c. 14 Lanc. Bar, 123; 3 York, 101; 11 Luz. L. Reg., 157 (1882).

coroner when they themselves would with the facts he had before him have determined to hold the inquest.

The justice acting as coroner is on a very different footing, for he by statute (*c*) has no right to fees until his inquisition is returned to and approved by the court of quarter sessions (*d*). His return is not conclusive to establish his right to fees and evidence should be received as to the necessity for holding the inquest (*e*) in his case the quarter sessions may well assume the *ex post facto* position they have presumed to occupy with the coroner.

Even though an inquisition be void as between the coroner and the county on a claim for fees it is valid for all other purposes (*f*) such as to commit a prisoner (*g*).

Sect. 102. The coroner's fees as we have seen are first for viewing the body \$2.75. This fee is however only for cases where the view is made in connection with an inquest actually taken (*h*). An attempt was made in *Watson v. Beaver County* to extend it to cases where the coroner having been called upon to hold an inquest views the body and determines no inquest is necessary. But Wickham, P. J., held that the fee bill did not contemplate compensation for the coroner in such cases; he acknowledged that this was a hardship to the coroner but "this" he said "is a matter for the legislature to consider" (*i*). In spite of this recommendation to the assembly, it was not until six years after the decision of *Watson v. Beaver County*, that an act was finally passed making provision for fees in such cases.

The act (*k*) provides as follows: "That whenever

(*c*) Act of 27 May, 1841, Sect. 15, P. L., 404.

(*d*) *Pickett v. Erie County*, 19 W. N. C., 60, s. c. 3 Pa. C. C. R., 23 (1887).

(*e*) *Reitlinger's Case*, 2 Kulp, 127, s. c. 14 Lanc. Bar, 123; 3 York, 101; 11 Luz. L. Reg. 157 (1882).

(*f*) *Reitlinger's Case* (*supra*).

(*g*) *Pickett v. Erie County* (*supra*).

(*h*) *Burnett v. Lackawanna County*, 9 Pa. C. C. R., 95; *Watson v. Beaver Co.*, 9 Pa., C. C. R., 495, s. c. 27 W. N. C., 469 (1891).

(*i*) In *Watson v. Beaver County* (*supra*) and see the remarks of Hemphill J. in *McFadgen v. Chester Co.*, 10 Pa. C. C. R., 124 s. c. 7 Mont. 149 (1891), and see *Witmore's Case*, 3 Dist., 699, s. c.; 14 Pa. C. C. R., 463 (1894).

(*k*) Act of 30 March, 1897, P. L., 8; see *Troutman v. Chambers*, 9 Dist., 533 (1900).

the coroner shall have been called and views a dead body and decides that no inquest is necessary he shall certify and return this fact as inquests are now returned and for such services he shall receive the same fee (*l*) and mileage as is now allowed by law for such view, when followed by an inquest, such fee and mileage to be paid as provided by law where an inquest is held." It is worthy of note that the coroner is entitled only to the fees provided for by the act and as he could have no fees at all before the act if no inquest were held so under the act he can have no fees for swearing witnesses at the preliminary examination (*m*).

Although the Act of 1897 does not mention justices of the peace it has in one case at least (*n*) been construed in *pari materia* with the Act of 1841 "when a justice of the peace acts as coroner he must perform the like duties and should receive the like fees. This plainly appears as the intention of the legislature when the two acts are construed together" (*o*).

Second his fee for summoning and qualifying inquest drawing and returning the inquisition \$1.37½. The act contemplates the coroner shall himself summon the inquest (*p*) and not issue a precept to the sheriff or constable as at common law (*q*). If he hire the constable therefor he must pay for it out of his own pocket (*r*).

Third, summoning and qualifying each witness 25c., to be paid out of the goods and chattels, lands and tenements of the slayer, in case of murder or manslaughter, if any

(*l*) Viz.: \$2.75 Troutman *v.* Chambers (*supra*).

(*m*) Fayette County Coroner's Return, 24 Pa. C. C. R., 498 (1900) for a discussion of deputy coroners fees and the acts of 1889, '93 and '97; see Fayette County Deputy Coroners Case, 20 Pa. C. C. R., 641, s. c. 7 Dist. 568 (1898). Grove's Case, 26 Pa. C. C. R., 449 (1900).

(*n*) Coroners Inquests, 28 Pa. C. C. R., 428 (1903).

(*o*) Coroners Inquests (*supra*), but see *contra*, Grove's Case (*supra*).

(*p*) Metzger's Inquest, 8 Dist., 373 (1899); Marvin Shaft Inquest, 3 Pa. C. C. R., 10 (1887).

(*q*) Fleta Lib., I, cap. 25; Britton, cap. 1, Sect. 5; 2 Hale's Pleas of the Crown, 59. The old fee bills *supra*, gave him a fee for issuing a precept to summon the inquest.

(*r*) Metzger's Inquest (*supra*), in *Re* Coroners Inquests, 1 Pa. C. C. R., 14, s. c. 3 Kulp, 451; 2 Del. Co., 446; 3 Lanc. L. R., 70 (1885); Marvin Shaft Inquest, 3 Pa. C. C. R., 10 (1887).

he hath otherwise by the county. But witnesses must come of their own accord; they are not entitled to mileage (*s*). Nor are they entitled to witness fees (*t*) for it is the public duty of every citizen to give his testimony to the coroner gratis that the ends of public justice may be served (*u*). Indeed to allow one witness at an inquest a fee is an infraction of the fee bill (*v*). A witness at a coroner's inquest is entitled to no fee even though he be an expert (*w*). But a doctor who makes a post mortem examination is in a different situation such services are extraordinary for he could not be forced to open the body (*x*). In *Allegheny v. Watts* the coroner's jury could not agree upon a verdict and for the purpose of assisting them in their determination the coroner called in a physician who made a post mortem examination of the body whereupon the jury agreed. Upon these facts it was broadly laid down that a physician making a post mortem examination for the coroner can hold the county liable for his fee. But the fee must be only reasonable compensation (*y*). In other words the coroner may hire a physician to make a post mortem examination and charge the county with his fee (*z*) so may a justice of the peace acting as coroner under the act of 1841 (*a*).

(*s*) *In re Coroners' Inquests* (*supra*), *in re Coroners' Inquests*, 2 Del. Co., 475 (1886).

(*t*) *Marvin Shaft Inquest*, 3 Pa. C. C. R., 10 (1887); *Fayette County Coroners Return*, 24 Pa. C. C. R., 498 (1900).

(*u*) *Per Gibson C. J. in Allegheny v. Watts*, 3 Pa. St., 462 (1846), and see *in re Coroners' Inquests* (*supra*), *Marvin Shaft Inquest* (*supra*), *Fayette County Coroners Return* (*supra*).

(*v*) *Allegheny v. Watts*, 3 Pa. St., 462 (1846) followed *Commonwealth v. Higgins*, 2 Kulp, 269 (1889).

(*w*) *Allegheny v. Watts* (*supra*), *Commonwealth v. Higgins* (*supra*).

(*x*) *Allegheny v. Watts* (*supra*).

(*y*) *Allegheny v. Watts* (*supra*), *in re Coroners' Inquests*, 1 Pa. C. C. R., 14, s. c. 3 Kulp, 451; 2 Del. Co., 446 (1885); *Metzger's Inquest* (*supra*), *Commonwealth v. Harman*, 4 Pa. St., 269, affirming 6 P. L. J., 120 (1846); *Northampton County v. Innes*, 26 Pa. St., 156 (1856); 3 P. L. J., 644; *Lancaster County v. Mishler*, 100 Pa. St., 624 (1882); *Walker v. McKean*, 31 Pa. C. C. R., 664 (1905); *Allegheny County v. Shaw*, 34 Pa. St., 301 (1859), and see 7 P. L. J., 217; 12 W. N. C., 312; 14 Lanc. Bar, 101; 30 Pitts. L. J., 361; 39 L. I., 459, and this even though the county commissioners had hired a regular physician at a fixed salary (*ibid.*)

(*z*) *Allegheny v. Watts* (*supra*).

(*a*) *Pickett v. Erie County*, 19 W. N. C., 60, s. c. 3 Pa. C. C. R.,

Luzerne County *v.* Day (*b*) appears at first blush to be contrary to this general rule, but that case only decides that the physician must demand his fee of the county commissioners, before he can sue for it. An autopsy is not always necessary (*c*) and whether it is or not is for the coroner to determine (*d*). It follows from this that should it be made to appear by the post mortem examination that the death was due to natural causes, the county court ever careful of the local purse might refuse the coroner his fees, but the physician could still demand and recover reasonable compensation for his services. Indeed, though the coroner who held the inquest was not *de jure* an officer, the county is liable to the doctor. "When a physician is summoned to aid in a post mortem examination it is not his business to institute a preliminary investigation to determine whether the inquest should be held or not. * * * It is sufficient for him to know that the proper officer of the county requires his services" (*e*). Only where it can be proved that the coroner and physician did not act in good faith can the latter's claim be defeated (*f*).

Evidently there was considerable difficulty and difference of opinion as to what is a reasonable fee, for in 1848, only two years after the decision in Allegheny *v.* Watts, a special act (*g*) was passed to the effect that in certain counties (*h*) ten dollars should be deemed a reasonable fee, un-

23 (1887); Coroners Inquests, 28 Pa. C. C. R., 428 (1903); Lee's Case, 9 Pa. C. C. R., 474 (1891).

(*b*) 23 Pa. St., 141 (1854).

(*c*) Even though W. A. Stokes and E. Ingersoll in their notes to Hale's Pleas of the Crown, say it is necessary in every case of homicide citing Commonwealth *v.* Harman.

(*d*) Walker *v.* McKean County, 31 Pa. C. C. R., 664 (1905) citing Allegheny *v.* Watts (*supra*).

(*e*) Pickett *v.* Erie County (*supra*), Northampton County *v.* Innes (*supra*).

(*f*) Walker *v.* McKean County (*supra*).

(*g*) The Act of 8 February, 1848, Sect. 1 P. L. 29.

(*h*) Berks and Lancaster repealed as to Berks 2nd April, 1856, Sect. 1 P. L., 219, extended to Washington County by the Act of 2nd April, 1867, Sect. 1 P. L., 677, to Northumberland by the Act of 10th April, 1873, P. L. 708, to Bucks and Montgomery by the Act of 14 March, 1860, Sect. 2 P. L. 167, to Indiana by the Act of 14 March, 1857, Sect. 1 P. L. 88, re-enacted by the Act of 27 February, 1863, Sect. 2 P. L. 82, to Blair by the Act of 15 April, 1853, Sect. 4 P. L. 453, to Arm-

less the county commissioners should think more was due, in which case they might pay whatever sum they thought fit.

It is to be noted that under the early acts the jurors were always given fees (*i*). The Act of 1814 makes no provision for them. The Act of 1821 (*k*) grants fees to grand and petit jurors, but makes no mention of coroners jurors. The Act of 1834 gave all jurors one dollars per day and six and a quarter cents a mile (*l*). The Act of 1879 seems to be in force at present and gives them one dollar per day whenever the time employed does not exceed six hours and when it does, one dollar and a half, but mileage is expressly forbidden (*m*). The coroner should be careful to state in his return the length of time each day the jurors were employed (*n*).

Finally mileage from the court house to the place of viewing the body. A strange misapprehension arose (*o*)

strong by the Act of 1 May, 1860, P. L., 437, repealed 11 May 1872, P. L. 755, fifteen dollars is a reasonable fee in Northampton on like conditions by the Act of 19 April 1856, Sect. 1 P. L., 461, ten dollars in Butler by the Act of 18 March, 1864, Sect. 1 P. L. 60, in Schuylkill and Mercer by the Act of 28 June, 1871, Sect. 1 P. L. 1380 in Allegheny the fee is \$10 for a superficial examination, \$20 if there is cutting to be done before decomposition has taken place and \$40 if the cutting is to be done after decomposition has taken place by the Act of 11 April 1866, Sect. 1 P. L. 603.

(*i*) But unlike the physician's fees those of the jury stand or fall with those of the coroner, *Burnett v. Lackawanna County*, 9 Pa. C. C. R. 95, s. c. 1 Lack. Jur., 410 (1890) which causes the reporter T. D. Wells, Esq., to remark that the rule is very unjust which fines the juror if he does not serve and then refuses to pay him if he does serve.

(*k*) 22 February, 1821, Sect. 12; 7 Sm. L. 377.

(*l*) April 14, 1834, P. L. 366, see *Rambo v. Chester County No. 2*, 1 Chester County 416 (1878). There are a number of local acts on the subject. See Act of 2nd April, 1867, Sect. 1 P. L. 676, and 5 February, 1869, P. L. 118, as to Venango, Act of 10 February, 1870 Sect. 1 P. L. 123, as to Washington, Erie, Beaver, Carbon, Mercer and Venango. Act of 31 January 1833, Sect. 2 P. L., 21 as to Allegheny; Act of 26 March, 1860, P. L. 278, as to Luzerne. The Act of 1873 P. L. 37, superseded the former acts and was in turn superseded by the Act of 1879.

(*m*) Act of 11 June, 1897, P. L. 147; this repeals the Act of 14 April, 1834, Sect. 138, giving all of jurors $6\frac{1}{4}$ cents for every mile traveled, *Coroners Inquest*, 1 Pa. C. C. R., 677, s. c. 2 Del. Co. 446 (1885); *Marvin Shaft Inquest* 3 Pa. C. C. R., 10 (1887). Certainly as mileage is forbidden the coroner cannot charge the county with hack hire for the jurors, *Marvin Shaft Inquest (supra)*.

(*n*) *Marvin Shaft Inquest (supra)*.

(*o*) *Coroners Inquests (supra)*.

that the case of *Rambo v. Chester County*, No. 1, 1 Chester County 414 (1878) decided that the Sheriff's Fee Bill of 1868 superseded the Act of 1814, in its allowance as to mileage but this is not correct; that case expressly decides that the Sheriff's Fee Bill of 1868 only applies to cases where the coroner is acting as sheriff and says that the coroner in performing his own services is to be limited to the Act of 1814 (*p*). Wherever the coroner acts as sheriff he receives the same compensation as the sheriff receives for similar services (*q*).

In Bucks County Coroners' Inquisitions (*r*) it was held that the coroner could only charge for the miles actually travelled and not from the court house (*s*) to the place where the body was found if it so be that that were a greater distance.

Sect. 103. It was decided in *Allegheny v. Watts* (*t*) that the coroner has authority to charge the county the expenses of all services ancillary to the inquisition. This rule was extended by the case of *Pickett v. Erie County* (*u*). But this does not include the costs of livery hire nor a stenographer to take the notes of testimony (*v*). Where the coroner found a body floating in the river viewed it and decided no inquest was necessary; the plaintiffs having shipped the body to its friends, sued the county for the costs, it was held the county was not liable (*w*).

Sect. 104. A peculiar point has arisen in connection with the performance of the coroner's duties under the Act

(*p*) And this view was affirmed *Coroners Inquests (supra)*, *Coroners Inquests*, 2 Del. Co. 475 (1886), *Marvin Shaft Inquest (supra)*, citing *Clerk v. Barber*, 2 Law Times N. S. 61.

(*q*) By the Act of 28 March, 1814, Sect. 19 P. L. 363 reaffirmed except as to Allegheny, Lancaster, Montgomery, Philadelphia, Beaver and Washington, and as to the sheriff of Dauphin by the Act of 2 April, 1868, P. L. 14, and made general by the Act of 12 June, 1878, Sect. 2 P. L. 188.

(*r*) 17 Pa. C. C. R., 553 (1894).

(*s*) Under the Act of 1867 extended to Bucks in 1868.

(*t*) 3 Pa. St., 462 (1846).

(*u*) 19 W. N. C. 60, s. c. 3 Pa. C. C. R., 23 (1887) a charge for a watchman is an auxiliary expense but not coroner's clerk hire, *Weaver v. Northampton County*, 2 Lehigh Valley, 408 (1887).

(*v*) *Marvin Shaft Inquest (supra)*.

(*w*) *Carson v. Forrest* Co. 14 Dist. 818 s. c. 9 Del. 490, 3 Pa. J. L. R., 262 (1905).

of 1897, by his deputy. Judge Mestrezat has given us a lucid opinion on this point (x) which it may be well to quote at length.

"On the 9th of May, 1889, an Act of Assembly was approved entitled 'An Act to provide for the appointing of deputy coroners in the several counties of this Commonwealth.' The first section of this act authorized the coroner to appoint deputies. The second section provided as follows: 'That such person so deputed by him as aforesaid shall receive, for such services as they may perform by virtue of said appointment, the same fees as are now provided by law for similar services rendered by said coroner, and the same shall be paid from such funds and at such places as the said fees of the said coroner are now by law payable.' The third and last section of the Act repealed all inconsistent acts or parts thereof.

"On June 6, 1893, an act was approved entitled 'An Act to provide for the appointment of one or more deputy coroners and defining their power and duties in the several counties of this commonwealth!' The first section of this act authorizes the coroner to 'appoint one or more deputies to act in his place and stead as he may deem proper and necessary.' The second section provides that 'such deputy or deputies so appointed shall have like power to hold inquests to select, summon and compel the attendance of jurors and witnesses and to administer oaths.' The powers and duties of the deputy coroner were not designated or limited by the Act of 1889. They are by the Act of 1893.

"It will be observed that the Act of 1893 supplies the first section of the Act of 1889. The first section of the Act of 1893, as we have seen, authorizes the appointment of deputies, and the second section defines their powers. The second section of the Act of 1889, is not repealed or supplied by the Act of 1893, and provides for the payment of

(x) *Fayette County Deputy Coroner's Case*, 20 Pa. C. C. R., 641, s. c. 7 Dist., 568 (1898); *Grove's Case*, 26 Pa. C. C. R., 449 (1900); and see also *Troutman v. Chambers*, 9 Dist., 533 (1900), and *Echard v. Fayette County*, 5 Dist., 371 s. c. 26 P. L. J., 461; 43 P. L. J., 461 (o. s.) (1896); *Fogarty v. Schuylkill County*, 13 Pa. C. C. R., 454 (1893).

the deputy coroner. Such is the general legislation on this subject in the State to-day.

"It is under this legislation and the Act of 1897, that the deputy coroners claim the fees for making these investigations. The Act of 1897, is entitled 'An act to provide for the payment and mileage of coroners for viewing a dead body where no inquest is held.' There is but one section in this act, and it is as follows: 'That whenever the coroner shall have been called and views a dead body and decides that no inquest is necessary, he shall certify and return this fact as inquests are now returned; and for such services he shall receive the same fee and mileage as is now allowed by law for such view, when followed by an inquest; said fee and mileage to be paid as provided by law where an inquest is held.'

"It is to be observed, therefore, that the power, duties and compensation of deputy coroners in the performance of their judicial functions are wholly dependent upon statutory enactment. At common law, as we have seen, the coroner could not appoint a deputy, and there was no provision for fees for either a coroner or his deputy. Admitting for the present the constitutionality of the Act of 1889, we cannot see that the deputy coroners are entitled to the fees claimed in the returns they have made in this proceeding.

"The first section of the Act of 1893, authorizes the appointment by the coroner of one or more deputies. But the powers of these deputies are not general, but are defined and limited by the second section of that act. They have like power with the coroner 'to hold inquests, to select, summon and compel the attendance of jurors and witnesses and to administer oaths.' For these, and no other services, compensation is provided by the Act of 1889.

The title of the Act of 1897 shows that said act was intended to provide compensation for the coroner for the services therein named. These services are to be performed by the coroner. They are not the services mentioned in the second section of the Act of 1893, which a deputy is authorized to perform, and hence he cannot perform them.

Unless, therefore, there is some other legislation that brings the deputy coroner within the purview of the Act of 1897, he has no right to fees for performing the services required in said act. We know of no such legislation. As said above, the Act of 1893, authorizing the coroner to appoint deputies, prescribed the power and authority of such appointees. The deputy coroner having no power under the Act of 1893, to perform the services mentioned in the Act of 1897 and being allowed fees for only 'such services as he may perform by virtue of his appointment,' cannot recover fees for services rendered under the Act of 1897."

Sect. 105. Where more than one inquest is held at one and the same time another peculiar question arises. To what fees are the coroner and his jury entitled? In *Fayette County v. Batton* (*x*) there were nineteen several views and fees were allowed for nineteen cases. But nowhere, where there has been one view only have fees been allowed for mileage, more than once (*y*). The witnesses had only to be summoned once but they had to be qualified in each case, that fee therefore was paid in each case (*z*). But whether or not the jury should be paid for more than one view is a matter of doubt, but so long as the same jury acts in each case their fees can only be paid once (*a*).

Sect. 106. Section 5 of Article 14 of the State Constitution (*b*) provides that in counties of over 150,000 inhabitants the county officers shall be paid by salary and not by fees. This section has been executed by a series of acts which provide in substance that in counties of over one million inhabitants the salary of the coroner shall be eight thousand dollars (*bb*), in counties of over 800,000 inhabitants

(*x*) 108 Pa. St., 591 (1885).

(*y*) *Rambo v. Chester Co. No. 2*, 1 *Chester Co.* 416 (1878); Anonymous *Q. S. Fayette Co. No. 117*, December Sessions 1883, Mss. *Francis v. Tioga County*, 8 Pa. C. C. R., 163 (1889); *Weaver v. Northampton County*, 2 *Lehigh Valley*, 408 (1887).

(*z*) *Rambo v. Chester Co. No. 2* (*supra*), *Weaver v. Northampton County*, (*supra*), *Francis v. Tioga County* (*supra*).

(*a*) *Weaver v. Northampton County* (*supra*), *Rambo v. Chester County No. 2* (*supra*).

(*b*) 1 *Purdon's Digest* (13th Ed.) p. 204.

(*bb*) Act of 1 June, 1911, P. L. No. 220.

and less than one million inhabitants (*c*), the salary of the coroner shall be five thousand dollars (*d*), in counties of over 500,000 and less than 800,000 inhabitants (*e*) the salary of the coroner shall be five thousand dollars (*f*). In counties having more than 250,000 and less than 500,000 inhabitants the salary of the coroner is two thousand dollars (*g*), in counties having over 150,000 and less than 250,000 the salary of the coroner shall be two thousand dollars (*h*).

In all these acts however (*i*) the coroner's salary is only to be paid to the full amount provided the fees earned by him less the amounts paid to his deputy and clerk equal or exceed the amount of his salary (*k*) so that all the evils of the fee system are retained as far as possible.

(*c*) Act of 21 March, 1899, Sect. 1, P. L. 12, this act supersedes the local acts relating to Philadelphia County, viz., the Act of 16 April, 1845, Sect. 9, P. L. 539; the Act of 12 April, 1856, Sect. 1, P. L. 324; the Act of 22 March, 1867, Sects. 1, 2 and 3 P. L. 532; and the Act of 18 March, 1869, Sect. 1, P. L. 404.

(*d*) And the deputy coroner \$2,500.

(*e*) Act of 21 March, 1899, Sect. 1, P. L. 12, this supersedes the special Act of 6 March, 1872, Sect. 3, P. L. 209 relating to Allegheny County.

(*f*) And the assistant coroner \$2,000.

(*g*) Act of 10 July, 1901, Sect. 1, P. L. 641.

(*h*) Act of 2 July, 1895, Sect. 1, P. L. 424.

(*i*) They are all amendments or supplements to the Act of 31 March 1876, P. L. 13.

(*k*) *Philadelphia v. Glibert*, 14 Phila., 212; s. c. 37 Legal Int., 376 (1880); *Bleiler v. Muldoon*, 16 Pa. Superior, 553 (1901), the former case, however, decides that the fees upon which the total sums are to be calculated are those provided by the Act of 16 April, 1845, Sect. 9, P. L. 539, and 22 March, 1867 Sects 1, 2 and 3, P. L. 532.

CONCLUSION.

From what we have seen of the condition of the law in Pennsylvania, we cannot but dwell for a few moments on the needful changes that frequently suggest themselves. It is easy to criticise and difficult to construct. Such is the state of the law on the subject that hasty legislation would in all probability cause more confusion than already exists, but it is unquestionable that legislation of a thorough character is needed in this State to bring order out of chaos. The Act of 1907 was not even a step towards this. The whole matter should be carefully gone over and the law codified. We cannot agree with the Court who said in *Groves Case*, 26 Pa., C. C. R. 449 (1900), "the true remedy for the abuses in the coroner's office is its absolute abolition. The original purpose of investigating crime through it, is better accomplished in the district attorney's office, without being hampered by meddlesome and consequential officers. We have had at least one instance where the coroner's blustering interference and bombast actually obstructed the investigation of a serious murder." All of which may be true, but no reason for the Court's conclusion.

An act putting all coroners on a salary basis freed from the necessity of making his fees pay the salary would be of benefit to the community for the coroner would no longer need to take unnecessary inquests that he might get fees therefor, they would no longer "obtrude themselves into private families to their great annoyance and discomfort without any pretence of the deceased having died otherwise than a natural death," as was said by Lord Ellenborough, *Rex v. Justices of Kent*, 11 East, 229. The judges always careful of the taxpayers purse would not need to review the coroner's accounts and feel constrained to stretch every point to hold every inquest illegal that did not produce a criminal, so discouraging the investigation of crime. The whole matter should be referred to a commission and a comprehensive act passed which would repeal the act of fourth Edward I and put the whole office on a modern basis.

APPENDICES.

A. FORM OF CORONER'S BOND AND RECOGNIZANCE.

The form of recognizance to be taken from the coroner of each county, and his sureties, shall be as follows, to wit: You, A. B. and C. D. and E. F. acknowledge that you owe the Commonwealth of Pennsylvania the sum of _____ dollars to be levied and made of your several goods and chattels, lands and tenements upon condition that you, A. B., shall and do well and truly perform all and singular the duties to the office of coroner of the County of X. appertaining to which you have been elected, and this recognizance to be void or else to be and remain in full force and virtue. Taken and acknowledged the _____ day of _____, A. D. _____.

Before me
Recorder of Deeds, for the County of _____

The form of bond to be given by the coroner and his sureties, shall be as follows, to wit: Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of _____ dollars, to be paid unto the said Commonwealth for the uses, intents and purposes declared and appointed by law, to which payment well and truly to be made we bind and oblige ourselves, our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Sealed with our seals and dated the _____ day of _____, Anno Domini 19 ____.

The condition of the above obligation is such that if the above bounden A. B., who has been elected coroner of the County of X., shall well and truly perform all and singular the duties to the said office of coroner appertaining, then this obligation to be void or else to remain in full force and virtue.

Sealed and delivered
in presence of:

B. OATH OF JURORS GIVEN IN THE MIRROR.

"You shall say by your oath concerning the death of him whom you have seen whether he died by felony or misadventure. If from felony whether by his own felony or by another, if from misadventure whether it came from God or man, if from famine, whether from poverty or common pestelence, and you shall say from whence he came and who he was. And if he died from another's felony who were principals and who were assessories and also if the hue and cry were duly raised or not, and if the neighbors ran thither as was right or not, and if the menee was rightly followed or not. Likewise who threatened his life or limb and who were pledges for his peace, and you shall say if he died through long imprisonment or torment, and by whose action he was further from life or nearer to death. And likewise all circumstances which could furnish ground for presumption. In cases where the person died from drowning or falling or other visitation of God and had not the power of speaking before his death you are to say the names of the finders and the four nearest neighbors who were his kinsfolk. And further if he were killed there or elsewhere and if elsewhere by whom and how he was brought there. And then the value of the deodand, its species and to whose hand it has come."

C. FORFEITURE FOR FLIGHT FROM STAUNDEFORD'S PLEAS OF THE CROWN.

A man indicted before the coroner for the death of another before whom it is also found by the same indictment that he fled on account of the said felony in such case notwithstanding that the jury which acquits him says, that he did not flee for the said felony all his goods are forfeited as appears in Fitzherbert title Forfeiture, p. 35, 26. For the king in such case is able to hold that by his record which is to his own advantage. And such is the record of the coroner. The same rule applies if one indicted for felony is acquitted and the jury which acquits him says he

did fly for the same felony, Fitz. tit. Cor. 296, 344-32 and it is an ancient law of the coroner of which Bracton and Britton both make mention. * * * *

For notwithstanding his acquittal still he is to be suspected of the felony for the vehement presumption "which has risen against him" also his goods through his "flight or retreat" as by the indictment. But he against whom the inquest finds *fugam fecit* whether it is traversable or not is a question. For nothing concerning them is other than an inquest of office as to that part of their verdict which concerns flight. And yet by that it is not bound that they have to be traversed and the reason is because they are only chattels for which no traverse is given against the king by any law yet made for the law reputes chattels among the *minima de quibus non curat* and for this reason it will be good for the coroner and judge inquests to be discreet and circumspect to see that the jury are not to the smallest extent seduced either by lack of evidence or through ignorance to the annulment of that against which they will give verdict and which the circumspection of the judge avoids, see 4 H 7 f 18, for he abridges the coroner from one power which he would have usurped thus "in inquiring concerning those who were accessories after the murder or homicide." For as to such he is not to interfere because that one who was killed did not come to his death by them. But he has to interfere only as to those who were the causes of the death and those were the principals and accessories before the fact. Therefore when he indicts one because he has feloniously received the murderer and because he made a flight, the indictment is void, and consequently the *fugam fecit* as appears in Fitz., p. 10., and thus note that a *fugam fecit* presented before the coroner against one who is accessory before the fact will give forfeiture just as much it will do so where it is presented against that one who is the principal felon. The rule is the same where the jury which acquits an accessory finds that he fled for that felony. And in such d'arraine case of acquittal before the justices it is not material that he was accessory before the fact or after for they have sufficient power to inquire and by their verdict he will forfeit in

both cases. Likewise one indicted, except for petty larceny, is acquitted yet if it were found that he fled his chattels would be forfeited as appears, Fitz. 406, and note in the same manner that one will forfeit his chattels he will forfeit them in the same way notwithstanding that he has his pardon for the said felony, Fitz. 338, &c. For the charter of pardon continues the presumption against him that he did the felony rather than take it away, Fitz. 339, where one was presented before the justices in Eyre for having killed a man and that he had his charter of pardon for it. And yet notwithstanding this, they adjudge that his goods be forfeited. And yet in the book it does not appear that there was any *fugam fecit* presented. And moreover it is a question whether this is law or not. And note that this *fugam fecit* is meant as much concerning a fugitive after he is arrested for the felony as it is where he fled before the arrest, Fitz. 289-290, 312, where it appears also that if on his flight he is killed by those who would have arrested him and it is presented before the justices in Eyre or other justices of record, who have power to inquire he forfeits his goods. And there again he is in a case that he cannot be acquitted or attainted of the felony but it follows if he remains in life for in such case he forfeits nothing under the *fugam fecit* found if it is not also a felony.

D. PORTIONS OF THE SO-CALLED STATUTE OF 4 EDWARD I
NOW IN FORCE IN PENNSYLVANIA.

"These things are to be inquired by the coroner. * * * First, when the coroners * * * have command * * * from the good men of the county to go where any are slain or suddenly dead * * * they ought forthwith to go and command * * * (a jury) to be before them in such place and when they shall be come thither the coroner ought upon the oath of them to make inquiry in this manner to wit: if it be of a person slain it is first to be inquired where he was slain to wit whether it were in a field or in a house or at any wrestling or at a tavern or in any company and whether any and who was there. In like manner it is to be inquired whether any and what persons are culpable either

of the fact or of the force and who were present, men or women, of what age soever they be, so that they can speak and have any discretion. * * * But if any such man be slain in the fields or in the woods and be found there, it is first to be seen whether he were slain there or not; if he were brought thither let them trace the steps if they possibly can of those who brought the body thither, whether horses brought it or a cart, if perchance it were brought by a horse or cart. Let it be inquired also whether the person slain were known or were a stranger, and where he lodged the night before. * * * These things being inquired the bodies of the persons dead or slain shall be forthwith buried.

“In like manner it is to be inquired of them that are drowned or suddenly dead; and afterwards it is to be seen of such bodies whether the persons were so drowned or slain or strangled by the mark on the neck, or by a mark on any of the limbs or by any hurt found on the body and so they are to proceed in form aforesaid * * *.”

E. FORM OF RETURN GIVEN BY JERVIS.

Middlesex, to wit: An Inquisition indented and taken for our sovereign lady the Queen at the house of John Denn known by the sign of the lamb situate in Street in the parish of in the County of Middlesex on the first day of January, in the twenty-seventh year of the reign of our sovereign lady Victoria before J. W. gentleman one of the coroners of our said lady the Queen for the said county on view of the body of Richard Fenn then and there lying dead upon the oath (or oath and affirmation) of C. D., E. F., G. H., etc., (naming the jurors sworn) good and lawful men of the said county, duly chosen, who being then and there duly sworn and charged to inquire for our said lady the Queen when how and by what means the said Richard Fenn came to his death do upon their oaths say.

Here follows the verdict.

In witness whereof as well the said Coroner as the jurors aforesaid have hereunto set and subscribed their hands and seals the day and year first above written.

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